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# LAW OF THE SEA RESOLUTION

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## HEARINGS

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL  
ORGANIZATIONS AND MOVEMENTS

OF THE

COMMITTEE ON FOREIGN AFFAIRS

HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

FIRST SESSION

ON

H. Res. 216 and 296

MARCH 21 AND 27, 1973

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## LAW OF THE SEA RESOLUTION

WEDNESDAY, MARCH 21, 1973

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON FOREIGN AFFAIRS,  
SUBCOMMITTEE ON INTERNATIONAL  
ORGANIZATIONS AND MOVEMENTS,  
*Washington, D.C.*

The subcommittee met at 2:10 p.m. in room 2255, Rayburn House Office Building, Hon. Donald M. Fraser (chairman of the subcommittee) presiding.

MR. FRASER. Today the subcommittee begins consideration of House Resolution 216 and House Resolution 296, identical resolutions on the Law of the Sea.

A worldwide Law of the Sea Conference is now scheduled to be held under United Nations auspices beginning late this year in New York and continuing in Santiago, Chile, in the spring of next year. The United Nations Seabeds Committee has been at work for the past 2 years preparing for the Conference and is in session in New York at this time. Its final preparatory session is scheduled for Geneva this summer. The wide range of topics on the agenda of the Seabeds Committee includes the breadth of territorial sea, transit through and over international straits, fisheries, marine environment, exploitation of mineral resources in the deep seabed and scientific research in the oceans.

The resolutions before the subcommittee today enjoy the bipartisan cosponsorship of 18 Members of the House. The resolutions call on the Law of the Sea Conference to reach agreement on a just and effective ocean treaty and endorse several important principles in the United States Draft Seabed Treaty. They further commend the United States Delegation to the Seabeds Committee for its work in preparation for the Law of the Sea Conference. If there is no objection, the text of House Resolution 216 will be placed in the record of the hearings at this point.

[The resolution follows:]

[H. RES. 216]

RESOLUTION on United States oceans policy at the Law of the Sea Conference

Whereas the oceans cover 70 per centum of the earth's surface, and their proper use and development are essential to the United States and to the other countries of the world; and

Whereas Presidents Nixon and Johnson have recognized the inadequacy of existing ocean law to prevent conflict, and have urged its modernization to assure orderly and peaceful development for the benefit of all mankind; and

Whereas the United States Draft Seabed Treaty of August 1970 offers a practical method of implementing these goals; and

Whereas a Law of the Sea Conference is scheduled to convene in November-December 1973, preceded by two preparatory meetings of the United Nations Seabed Committee; and

Whereas it is in the national interest of the United States that this Conference should speedily reach agreement on a just and effective ocean treaty: Now, therefore, be it

*Resolved*, That the House of Representatives endorses the following statement of May 23, 1970, and now being pursued by the United States delegation to the Seabed Committee preparing for the Law of the Sea Conference—

(1) protection of the freedom of the seas, beyond a twelve-mile territorial sea, for navigation, communication, and scientific research, including unimpeded transit through international straits;

(2) recognition of the following international community rights:

- (a) protection from ocean pollution,
- (b) assurance of the integrity of investments,
- (c) substantial sharing of revenues, particularly for economic assistance to developing countries,
- (d) compulsory settlement of disputes, and
- (e) protection of other reasonable uses of the oceans beyond the territorial sea, including any economic intermediate zone (if agreed upon);

(3) an effective International Seabed Authority to regulate orderly and just development of the mineral resources of the deep seabed as the common heritage of mankind, protecting the interests both of developing and of developed countries; and

(4) conservation and protection of living resources, with fisheries regulated for maximum sustainable yield, with coastal state management of coastal and anadromous species, and international management of such migratory species as tuna.

SEC. 2. The House of Representatives commends the United States delegation to the Seabed Committee preparing for the Law of the Sea Conference for its excellent work, and encourages the delegation to continue to work diligently for early agreement on an ocean treaty embodying the goals stated in section 1.

Mr. FRASER. On behalf of the subcommittee I would like to extend a warm welcome to Congressman Thomas N. Downing, chairman of the Oceanography Subcommittee of the Merchant Marine and Fisheries Committee, who has an important interest in the law of the sea and we are delighted to have him with us today.

Mr. DOWNING. Thank you very much, Mr. Chairman.

Mr. FRASER. Our principal witness for today's hearing is the head of the U.S. delegation to the United States Seabed Committee, Mr. John Norton Moore. Mr. Moore, who assumed his position in January of this year, is a prominent international legal scholar and he is leading our delegation with great distinction. Accompanying him today are representatives of other Federal agencies concerned with ocean policy: Mr. Stuart French, Department of Defense; Mr. Howard Pollock, Department of Commerce; Capt. Paul Yost, Department of Transportation.

After Mr. Moore has made his prepared statement we would ask that all four gentlemen at the witness table be available for questioning by the subcommittee.

Mr. Moore, you may proceed as you wish.

# STATEMENT OF JOHN MORTON MOORE, U.S. REPRESENTATIVE TO THE UNITED NATIONS SEABEDS COMMITTEE, DEPARTMENT OF STATE

Mr. MOORE. Thank you, Mr. Chairman.

It is a pleasure to be here today to testify on behalf of the executive branch on House Resolution 216 which provides for congressional

endorsement of U.S. negotiating goals for the Law of the Sea Conference. I note that House Resolution 296 is identical to House Resolution 216, and that in their intent, we believe, these resolutions are identical to Senate Resolution 82 which has recently been introduced in the Senate by Senators Case and Pell.

Mr. Chairman, the executive branch welcomes the introduction of these resolutions as a clear demonstration of congressional interest in achieving a just, rational, and peaceful order for the oceans. This committee has closely followed our progress toward a new Conference on the Law of the Sea. We are particularly pleased, Mr. Chairman, to receive your advice and that of Congressman Maillard as congressional advisers to our delegation. Its members have repeatedly emphasized the importance of the broad goals outlined by President Nixon in his oceans policy statement of May 23, 1970. The background from which these goals emerged is in many ways an unsettling one, and is perhaps best described in the opening paragraphs of the President's statement:

The nations of the world are now facing decisions of momentous importance to man's use of the oceans for decades ahead. At issue is whether the oceans will be used rationally and equitably and for the benefit of mankind or whether they will become an arena of unrestrained exploitation and conflicting jurisdictional claims in which even the most advantaged states will be losers.

The issue arises now—and with urgency—because nations have grown increasingly conscious of the wealth to be exploited from the seabeds and throughout the waters above, and because they are also becoming apprehensive about the ecological hazards of unregulated use of the oceans and seabeds. The stark fact is that the law of the sea is inadequate to meet the needs of modern technology and the concerns of the international community. If it is not modernized multilaterally, unilateral action and international conflict are inevitable.

This is the time, then, for all nations to set about resolving the basic issue of the future regime for the oceans—and to resolve it in a way that redounds to the general benefit in the era of intensive exploitation that lies ahead. The United States as a major maritime power and a leader in ocean technology has a special responsibility to move this effort forward.

Mr. Chairman, in Resolution 3029, the 27th U.N. General Assembly decided to convene the organizational session of the Law of the Sea Conference at the end of this year, and to continue with the substantive work of the Conference in Santiago, Chile, in April–May 1974. In the preamble of the resolution, the General Assembly expresses “the expectation that the Conference may be concluded in 1974 and, if necessary, as may be decided by the Conference with the approval of the General Assembly, at a subsequent session or subsequent sessions no later than 1975.”

The U.N. Seabed Committee, which now has 90 members, is charged with preparations for the Conference. It held two meetings for this purpose in 1971 and again in 1972. The schedule for preparatory work was intensified by the General Assembly last fall, and the committee is currently halfway through a 5-week session in New York. An additional 8-week session will be held in Geneva this summer.

The United States has been an active participant in the work of the Seabed Committee. On August 3, 1970, we were the first Committee member to introduce a draft Convention on the International Seabed Area. One year later we introduced draft articles on the territorial sea, straits, and fisheries. Last summer we presented a revised fisheries article, as well as detailed suggestions regarding means to accommo-

date coastal state concerns regarding navigation safety and pollution in straits. On August 10, 1972, we made a comprehensive policy statement elaborating on the underlying concepts of the President's oceans policy statement which has been made available to this committee and which we believe is in complete harmony with the resolutions before us today.

The issues involved in the Law of the Sea Conference touch upon virtually every major aspect of our foreign policy and involve a wide range of basic U.S. interests. Our national security interests as well as economic interests are involved in assuring free movement of vessels and aircraft on the high seas and through international straits. Adequate protection of the marine environment requires international agreement on antipollution measures that will be universally respected. Fisheries must be conserved and rationally managed for the benefit of present and succeeding generations. The seabed contains vast reserves of energy and minerals which are needed in the United States and which can yield benefits for the international community, particularly the economic advancement of developing countries. Scientific research in the oceans is the key to a better understanding of our global environment, to maximum beneficial use of the oceans, and to the protection of its life-sustaining qualities.

History has taught us that there is always the potential for conflict over rights to use the oceans. As ocean uses become more important, it becomes increasingly urgent to build a modern structure that will assure order. Nations around the world must have a common understanding of their respective rights and duties in the seas, and widespread international agreement is the best way to assure this.

A central goal of our oceans policy is to achieve an agreement that not only accommodates basic interests of the United States and other nations but that can form a durable part of a new structure for peace. In some cases, concepts have stood the test of time; in other cases, new approaches are needed.

Freedom of navigation and free overflight of the high seas have served nations well. Respect for these principles has prevented a race for dominion over areas of the oceans, has permitted states the broadest possible options in structuring their foreign relations and has contributed immeasurably to the free flow of goods, people and ideas around the world. Accordingly, we have proposed agreement on a 12-mile maximum breadth for the territorial sea coupled with agreement on free transit through and over straits used for international navigation. To the extent regulation is needed to insure safety and prevent pollution this can be, and is being, done effectively through international agreement. We have made proposals in this regard.

The fundamental problem that has disrupted the traditional law of the sea is that of conserving and utilizing the ocean's resources. However, attempts to resolve resource problems have in several instances entailed unilateral expansions of the territorial sea that in effect purport to limit navigation and overflight as well. Moreover, they have been based essentially on all-or-nothing propositions: Either the coastal state completely controls a resource in an area or it has no control at all. In this situation, the limits for such control take on transcendent importance.

What emerges from the President's oceans policy statement is a new kind of approach. Essentially, it involves combining coastal and international elements in the same coastal area beyond the territorial sea in order to achieve an adequate accommodation of interests in the resources. If these elements are adequately balanced, it can readily be seen that objections to coastal state resource management in a broad area are necessarily reduced.

With respect to the seabed resources of the continental margin, or "intermediate zone," this is reflected in the five points contained in the President's statement. Coastal States would manage these seabed resources, subject to international treaty standards: (1) to prevent unreasonable interference with other uses of the ocean, (2) to protect the ocean from pollution, (3) to assure integrity of investment necessary for exploitation, (4) to provide royalties to be used for international community purposes, particularly economic assistance to developing countries, and (5) to assure peaceful and compulsory settlement of disputes.

With respect to the deep seabeds, a new international organization would be established to authorize and regulate mining. The creation of this organization would represent a major advance in international cooperation in resource management and development. In the absence of such an organization, seabed mineral resource development may take place chaotically.

We advocate a species approach to fisheries management. Coastal species of fish would be managed by the coastal state wherever they might be on the high seas off the coast of that state. Similarly, the coastal state of origin would manage anadromous species throughout their migratory range on the high seas. In both cases there would be international treaty standards to assure conservation, maximum utilization and equitable allocation of the fish stocks consistent with a coastal state preference based on its capacity to harvest, and peaceful and compulsory settlement of disputes. On the other hand, highly migratory species of fish such as tuna would be subject to international regulation.

Mr. Chairman, we have framed our various proposals not only to accommodate U.S. interests but to accommodate those of other nations as well. We believe the underlying elements of these proposals can form the basis for widespread international agreement on a new Law of the Sea Treaty. This, of course, does not mean that we expect all aspects of these proposals to remain unchanged in the course of negotiations with over 100 other nations, and we are sure the sponsors of the resolutions before us appreciate this as well.

The intent of House Resolution 216 is, I believe, identical to Senate Resolution 82. As presently drafted, however, the reference to straits in House Resolution 216 could be interpreted as a reference only to areas beyond a 12-mile territorial sea, whereas the need is for free transit through and over straits used for international navigation which would be overlapping by a 12-mile territorial sea. Accordingly, it is important in making this point clear that the text of Senate Resolution 82 be used in this regard.

Mr. Chairman, we believe the goals set out in these resolutions would benefit all Americans and, indeed, all of mankind. They are goals on

which we can all unite, and in which we can all take pride. New evidence of the determination of the Congress to join with the executive branch in promoting a successful conference that protects basic American interests and inures to the benefit of all mankind would be a timely and positive contribution to the negotiating process.

We thank the distinguished members for this initiative and strongly support it.

Thank you, Mr. Chairman.

Mr. FRASER. Thank you very much, Mr. Moore.

We are honored this afternoon by having in addition to Mr. Downing, Mrs. Sullivan, who is the chairman of the Merchant Marine and Fisheries Committee. Delighted to have you here.

Mrs. SULLIVAN. Thank you for inviting us.

Mr. FRASER. Let me open the questions with just one or two and I understand that all of you are prepared to respond to the questions when it is appropriate.

**STATEMENT OF HOWARD W. POLLOCK, DEPUTY ADMINISTRATOR,  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,  
DEPARTMENT OF COMMERCE**

Mr. POLLOCK. Mr. Chairman, at some point—I could do it now or later—I would like to address the particular wording of section 1, subparagraph 4, concerning the living resources of the oceans so that there is no misunderstanding about our intent as to its meaning.

Mr. FRASER. Well, I think perhaps maybe we should invite you to do that now so we get that on the record.

Mr. POLLOCK. Very well. I will be happy to do it. I want to clarify the specific meaning of this section 1, subparagraph 4, on page 3 of House Resolution 216 because I want to distinguish between a coastal state or nation generally and a particular coastal state in whose waters anadromous fish spawn.

Mr. Moore in his testimony at the top of page 5 indicated the coastal state of origin which in the case of anadromous fish would be the host state. Our interpretation and intent with reference to section 4 (third line) is that it would mean coastal state management of coastal or resident species and host state management of anadromous species.

Mr. FRASER. You are talking about which line now?

Mr. POLLOCK. It is on page 3 of House Resolution 216, subparagraph 4.

Mr. FRASER. Line 3 of that subparagraph?

Mr. POLLOCK. Yes, sir. Starting "with coastal state management of" our intent there would be that that would mean with coastal state management of coastal or resident species and host state management of anadromous species and with international management of such migratory species as tuna.

The reason I bring this up is that a host state is a particular kind of coastal state. Japan, as an example, is a coastal state and the U.S.S.R. is a coastal state. What we are talking about here is management by the host state or the state where the anadromous fish such as the salmon spawn or again, as Mr. Moore stated, the coastal state of origin of the anadromous species.

We have a peculiar situation which might bring that distinction into focus; that is in the border area between the United States and Canada in the vicinity of the southeastern part the Alexandria archipelago. We have a situation where Canadian fish come out of the oceans and go through Alaskan waters on the way to their streams of origin in Canada and we have the converse of that. We have the situation where American salmon will come out of the oceans, the Pacific Ocean or the Gulf of Alaska, and go through Canadian waters on the way to the Alexandria archipelago.

We have a peculiar situation here where we recognize that there has to be particular consideration for the control of those salmon by giving a preference to the host state as distinct from any coastal state. In the case of the Canada-United States relationship the problem is so complex that not only is the wording of the resolution important to our understanding of it, but, in fact we do have to have bilateral treaties in order to work out the problems between the United States and Canada.

My only point, Mr. Chairman, was to make certain that the members of the committee did understand that where we are talking about anadromous species we don't mean any coastal state, we mean the coastal state of origin or, to use another term, the host state.

Thank you, Mr. Chairman.

Mr. FRASER. Well, let's pursue that a moment further. Do you view the wording of the resolution now as adequate with that kind of a clarification?

Mr. POLLOCK. So long as the legislative history will contain the explanation it is fine. If in the wisdom of the committee they sought to amend it, it would not matter if it were done that way. We are satisfied—I think all of the Government is satisfied—with the particular wording of that so long as it is clearly understood that we are trying to distinguish, in this case, anadromous fish.

Mr. FRASER. Perhaps it might be useful if someone on behalf of the executive branch did submit wording that we might look at in the event—

Mr. POLLOCK. I can give you something for the record now if you want, Mr. Chairman.

Mr. FRASER. Why don't you do that. It might be wise to clarify it through amendment. It would be useful to have your suggestion.

Mr. POLLOCK. I would simply then amend subparagraph 4 to read: "Conservation and protection of living resources with fisheries regulated for maximum sustainable yield with coastal State management of coastal species and host State management of anadromous species and with international management of such migratory species as tuna."

Mr. FRASER. Fine. That is fairly consistent with what you were indicating was clearly the intent of that clause.

Mr. POLLOCK. Thank you, Mr. Chairman.

Mr. FRASER. Mr. Moore, in your statement you say that the organizational session of the Law of the Sea Conference will be held at the end of this year and to continue with the substantive work of the Conference in Santiago, Chile, in the spring of 1974.

What do you mean by the organizational session and what would probably be accomplished at that session and how long do you think it would last?

Mr. MOORE. The General Assembly resolution that established the schedule for the remaining two preparatory sessions of the Seabeds Committee and then established the organizational session and the 8-week session in Santiago indicate a 2-week session for the organizational session. It would be held in New York at the end of this year in the latter part of November and December. Thought it would be very difficult to know precisely what would be done at this point, we would anticipate that many of the organizational issues such as the questions of chairmanships of different committees, the basic structure of the Conference itself and how it would operate would be dealt with at that time.

Mr. FRASER. So that by the time that session is over and there is a new session in Santiago they could go right to work.

Mr. MOORE. Yes; that would be our hope.

Mr. FRASER. But you don't expect any substantial discussions in the New York session?

Mr. MOORE. I would not anticipate that the organizational session would include any substantive discussion.

Mr. FRASER. You indicated the United States was the first Seabed Committee member to submit a draft of a seabed treaty. How many other drafts have been submitted, total drafts or completed articles? Can you give us some idea?

Mr. MOORE. I don't know the exact number. Really it varies depending on the particular issue or question concerning the international seabed regime. I think a number of nations have submitted additional drafts on the question of territorial seas. The United States, of course, has also submitted such articles in conjunction with its straits articles; and the Soviet Union introduced one the other day. There have been a number of drafts introduced in that area, and the same is true of some of the other issues involved in the Conference. The Canadians, for example, recently introduced draft articles dealing with marine pollution.

Mr. FRASER. What is the difference between the U.S. draft article on fisheries of 1971 and the revised fisheries article that was introduced last summer in Geneva?

Mr. MOORE. I think Mr. Pollock might be a better person to answer that question.

Mr. POLLOCK. Thank you, John.

I think the simple answer is that we found after we had tabled the initial draft that we had put too much in the way of international control of coastal or resident species of fish. We found that there was an antagonism toward this in the international arena. We thought that we could very well accomplish our own U.S. objectives by giving more coastal state preference and coastal state management in the areas beyond the territorial sea. This is generally what was done and it was, I think, more favorably received.

Mr. FRASER. Mrs. Sullivan.

Mrs. SULLIVAN. No questions right now. I would prefer to question a bit later.

Mr. FRASER. Mr. Mathias.

Mr. MATHIAS. I have just one question concerning the limits. How did you arrive at a 12-mile limit?

Mr. MOORE. We have traditionally followed a 3-mile limit with the territorial sea. At the Conferences on the Law of the Sea held by the United Nations at 1958 and 1960 the vote was very close on the question of extension of the territorial sea to 12 miles. At the present time there are more states in the international community that claim a 12-mile territorial sea or adopt an approach indicating that it is permissible to have a territorial sea up to 12 miles than any other limit. Our feeling is that a 12-mile territorial sea accommodates coastal state and international community interests and would be reasonable in connection with an overall comprehensive settlement that also protected fully the right of free transit through and over international straits.

Mr. MATHIAS. In the Sea Conference will there be countries attending that have a different idea on the territorial waters?

Mr. MOORE. Yes, that is correct. Right now the breadth of the territorial sea varies from 3 miles. Many states claim three. More states claim 12 at the present time and a few states claim as far as 200 miles.

Mr. MATHIAS. So it would be better to get one figure that everybody can accept?

Mr. MOORE. Yes. Our feeling from the present pattern of state practice is that there is really no chance of agreement on a breadth of the territorial sea broader than 12 miles. Certainly it is important to our position that the breadth of the territorial sea should not be greater than 12 miles. We believe that many of the interests of the other states that have tentatively adopted a territorial sea beyond 12 miles can be accommodated, principally with regard to resources. We feel that the issue should be approached from a functional perspective first looking at the question of navigation and the question of what the coastal state's real need is in the territorial sea and then taking additional issues separately such as fisheries and seabed minerals.

Mr. MATHIAS. I believe that the Law of the Sea Conferences were also held in 1958 and 1960.

Mr. MOORE. That is correct.

Mr. MATHIAS. What happened on the subject in those two conferences?

Mr. MOORE. The outcome of those conferences were a number of conventions on the law of the sea. There were four basic conventions: on the territorial sea and the contiguous zone, on the high seas, on the Continental Shelf, and on the living resources of the high seas. The major issue that was not decided at that conference—there were also a number of other important issues—was the breadth of the territorial sea. No agreement was reached at those conferences on the breadth of the territorial sea. In addition it was not very clear with respect to the seabed resources jurisdiction of the coastal states beyond 200 meters and the whole question of the regime for the deep seabed was not clarified at those conference, either.

Mr. MATHIAS. That is all the questions I have, Mr. Chairman.

Mr. FRASER. Mr. Downing.

Mr. DOWNING. Thank you, Mr. Chairman.

Again I want to thank you and the committee for allowing Mrs. Sullivan and me to appear here. This is a most interesting subject and my Subcommittee on Oceanography does have a deep concern with it.

It is good to see Mr. Moore. He was a professor at the old Law School of the University of Virginia. I wish you much success.

Mr. MOORE. Thank you.

Mr. DOWNING. I think the goals in here are very laudable.

Mr. FRASER. You want him to have the same success here in teaching you.

Mr. DOWNING. Unfortunately, he didn't teach me.

Mr. MOORE. We were both taught by Judge Hardy Dillard.

Mr. DOWNING. That is right.

I forgot what I was going to say.

The goals of this resolution are laudable. The only thing that concerns me deeply is the time element. If everything worked well, when would you think an effective treaty could be signed?

Mr. MOORE. We have in testifying before your committee spelled out what we would view as a timely and successful conference. Basically it is that we feel that the conference resolution schedule should be adhered to and that certainly it ought not go beyond 1974-75.

Mr. DOWNING. You are aware of the rather urgent need for a quick solution to this problem, are you not?

Mr. MOORE. Yes, indeed. We are watching very closely the progress of the preparatory work and we will certainly watch the progress in the conference itself. There is a real need to reach a timely and successful agreement on a comprehensive Law of the Sea Convention.

Mr. DOWNING. You have three or four companies in this country—three or four at least—that are all geared up ready to go, underwater engineering companies to recover valuable mineral resources, but they cannot obtain the necessary financing unless they have some protection of their claim on the bottom of the ocean. Now this could possibly be done in a unilateral manner or multilateral if other nations joined with the United States but I assume that you still say that you do not wish any unilateral action at this time.

Mr. MOORE. We would differentiate the time periods into two basic time periods. One of those would be from the present until a convention is signed. The second would be from the time the convention is signed until the convention received sufficient ratifications to go into force.

With respect to the first period we will watch very carefully the progress toward a timely and successful conference and our policy will be geared to an assessment of that continuing progress. Our own feeling at the present time is that we are expecting the conference resolution timing to be adhered to and we are cautiously optimistic on that point.

With respect to the second time period, that between the signing of the convention itself and the actually going into effect of the convention, we have urged the desirability of provisional entry into force of the permanent regime, that is, provisional operation of the permanent deep seabed machinery. As we indicated when Mr. Brower was testifying before your subcommittee, we intended at that time to put such an idea before the Seabed Committee. I am happy to say that last Monday we did propose such provisional entry into force of the international regime and machinery.

Mr. DOWNING. What happened?

Mr. MOORE. The response was immediate from a large number of speakers. There were some 19 separate countries, I believe, that spoke.

None of those countries ruled out the idea at all. It was a rather gratifying response in terms of expression of interest on the concept and on the preparation of a study on the issue by the Secretariat, though, of course, at this point it is too early to tell what will be the final outcome at this session of the Seabed Committee.

Mr. DOWNING. Thank you, Mr. Chairman.

Mr. FRASER. Mr. Winn.

Mr. WINN. Thank you, Mr. Chairman.

Mr. Moore, I have heard your answer to Mr. Downing's questions but I just wondered, in your own opinion do you think we have really got a chance to adopt this treaty this time?

Mr. MOORE. Yes, I do. I am cautiously optimistic. The issues are very complex. There are over 100 countries involved; the stakes are high. But my own assessment is that there is a good chance that the conference resolution schedule will be met. We are certainly proceeding on the understanding that other nations are, as we are, negotiating in good faith with the very important undertaking of trying to achieve a widely accepted convention on the law of the sea. We think it is very, very important at this point that all of the nations of the world reach that kind of broad agreement on ocean space. If we don't, the potential for conflict between nations with the escalating usage of ocean space for the next years will be simply too great. In fact the present uncertainty in ocean space is too great. It is very costly for all nations and we believe strongly—and I think that the other nations participating in the negotiations recognize this also—that we need to reach agreement in this area.

Mr. WINN. Do you see any particular fly in the ointment?

Mr. MOORE. No, I am happy to say—

Mr. WINN. That is a bad question to ask at this stage of the negotiations.

Mr. MOORE. I am happy to say I don't at this point. I am cautiously optimistic on achieving a successful outcome.

Mr. WINN. Along some of the same lines that Mr. Mathias was talking about some nations, of course, and the U.N. Seabed Committee have asserted that it is the sovereign right of every nation to determine the breadth of its own territorial seas. What are your specific objections to this and how do you break down that barrier in these discussions?

Mr. MOORE. Well, certainly that is not our understanding of international law. International law comes about through agreement between nations and through a process of claim and counterclaim. These claims are subject to a kind of reciprocity and ultimately of acceptance by the international community. It is not a process that results solely from unilateral claims, so we would reject any notion that coastal states are free to set any limits; for example, for their territorial sea. The process is and always has been governed by international law.

As to how it is controlled in the Conference, I think it really is a question of pointing out to the community of nations where our common interest lies. We think that the other nations will recognize that as we do and that the outcome of the conference is likely to reaffirm the community common interest.

Mr. WINN. Do you think those countries that have been going under that philosophy are still so dedicated to it that they can't be dealt with in a broader way or for the good of the overall treaty?

Mr. MOORE. I would certainly hope not. I believe that all of the countries that I have had occasion to deal with in the Seabed Committee are negotiating in good faith at this point and I think that the negotiations must proceed in that spirit, and certainly they have from our side.

Mr. WINN. It is very gratifying to hear your cautious optimism. We hope that you are right.

I would like at this time to thank Mr. Pollock for his clarification on page 3 in paragraph 4 as one of the cosponsors of it. I think you did clear up some misconceptions or misunderstandings that might have occurred.

Mr. FRASER. Mr. Reid.

Mr. REID. Thank you, Mr. Chairman.

First let me thank you, Mr. Moore, for the thoughtful character of your testimony and to say how delighted I am to have Howard Pollock here today along with Mr. French and Mr. Brower.

Mr. POLLOCK. Thank you.

Mr. REID. I have really two lines of inquiry I would like to pursue very briefly. One, might I ask you to turn to page 3 of your testimony and to page 2 of the House Resolution 216.

In your testimony you say, "Our national security interests as well as economic interests are involved in assuring free movement of vessels and aircraft on the high seas and through international straits."

I note that you omit cargoes. Would you care to comment on that?

Mr. MOORE. I think certainly the movement of cargoes on vessels and on aircraft is certainly part of what we are getting at when we emphasize the importance of free navigation on the high seas and through international straits, so that would be a very important part of the total package of free navigation.

Mr. REID. Well, I might say parenthetically, if you will pardon the personal reference, I spent 2 years of my life trying to make that point with reference to the Suez Canal. As you know, the UAR did not accept that definition in spite of a unanimous vote in the Security Council of six countries and including President Eisenhower's statement in support that we would take matters seriously if they were not upheld consistent with that resolution. The UAR has always made a distinction between ships and cargoes and has always been reluctant to let Israeli cargoes go through. They have distinguished cargoes from ships, and sometimes not on Israeli ships.

Consistent with that diplomatic history, and given the hope of some of us that proximity talks will occur at some point, where we may be discussing free and open transit in the Suez Canal, might it be useful to be explicit this time with regard to cargoes?

Mr. MOORE. I think that is an interesting point and one that would merit study. With respect to the basic question of free navigation on the high seas and free transit through international straits I think the kinds of problems that you have alluded to are some of the real problems.

For example, if we were to rely solely on the doctrine of innocent passage under international law, it is interpreted differently by different states. It is subject to subjective interpretations. Some might say it is a question of where the ship was going, the existence of a state of belligerency, the kind of ship, and other variables. So we feel

it is very important to reaffirm this basic right to transit international straits. That is a most important aspect of our overall policy.

Mr. REID. I am delighted, Mr. Moore, you touched on that because I wanted to get into it. If my memory serves, the Constantinople Convention, which I don't have in front of me, has been referred to from time to time along with others in connection with whether free and innocent passage should be accorded to belligerents or what constitutes belligerency.

One of the definitions of the UAR vis-a-vis the Suez Canal centered on this question repeatedly. Even though you are talking about a member state of the United Nations and even though there are certain other contractual expressions of a number of powers, the UAR considered that they could accord a unilateral definition in certain interpretations, including what constituted belligerency, and merely by expressing belligerency that then gave the UAR the right to deny free and innocent passage even though there was no state of war at that particular moment.

Would you care to comment as to what we can do to clarify that point?

Mr. MOORE. Well, one point that I would make is that the Law of the Sea Conference will basically not be dealing with a revision of specific multilateral regimes already set up for particular straits or canals.

With respect to the general point of whether any nation is free to indicate a state of belligerency against any other, my own perspective on this—and this is not really something relevant right now to any of our issues in the law of the sea negotiations—certainly belligerency is something that is governed by the United Nations Charter. In fact, the real issue is one of whether the standards of article II, subparagraph 4 of the United Nations Charter have been met or whether the standards of article 51 of the United Nations Charter dealing with individual and collective defense have been met.

So certainly states are, with respect to these issues, also governed by a regime of international law and it is not solely, as in other areas of international law, a question of making unilateral claims.

Mr. REID. What I am suggesting is, that international law and the U.N. Charter notwithstanding, you take a step forward rather than reaffirming certain powers that have not been effective. Is there new language? I have just been thinking here off the cuff, but it is something like unimpaired free and innocent passage obviously meaning with no exceptions in more elegant legal terminology. But if you rely on the charter in this regard, I am afraid you are leaning on a rather weak past history. I merely call it to your attention for such scrutiny as you think it might deserve.

I think I have one final question I would like to ask about and it is partly Mr. Pollock's area, I guess. You mention an interest of Mr. Bingham's and mine along with this committee when you touch on tuna because when you mention that and when we mention it in the draft resolution, we are also referring to porpoises.

I know the world-at-large is still inadvertently or advertently killing about 20,000 porpoises a year and I just wondered whether that is something that might engage your attention.

Mr. MOORE. If I could for a moment go back to the earlier question you had asked and then I will come to this.

Mr. REID. Certainly.

Mr. MOORE. With respect to all of the regimes we are talking about, the international straits under the proposal, for example, we would not be simply relying on a general standard of belligerency or nonbelligerency under the charter, but basically it would spell out a presently existing right: That is to travel international straits from one side to the other and that right is the right of free transit, of going from one side of the strait to the other in an unambiguous fashion without subjective interpretation by the coastal state.

Mr. REID. The only problem with that is, and we are really dealing with one country here in particular, they have not upheld that interpretation and that is why I think we need language that clearly states that the right of freedom of transit pertains to any ship absent a total all-out war. A period of control, tension, or differences, should not preclude that free transit.

Now how you put that into language is another matter, but it seems to me that what we are talking about is unimpaired freedom of the seas, not freedom of transit under most circumstances, but under virtually all.

Mr. MOORE. Yes. Actually it is the same thing. The old formula, the question of innocent passage was one that was subject to subjective State interpretation but free transit, unimpaired transit, I think is another way basically of saying the same thing. We have used free because we felt that made it slightly clearer, but I think basically it is exactly the same thing.

Mr. FRASER. I wonder if you would pause for just a moment. We have a housekeeping problem that will only take a minute or two and we need to deal with it while a quorum is present. Then maybe the tuna question could be repeated when Mr. Pollock has returned.

Next Tuesday afternoon when we complete our hearing our hope is that we might be able to take up this resolution in a markup session, which I assume we would probably want to do in executive session. So I am asking the subcommittee if it will agree to go into executive session next Tuesday afternoon to consider this and any other measures that might be ready for markup at that time.

Mr. FOUNTAIN. I make such a motion, Mr. Chairman.

Mr. MATHIAS. Second.

Mr. BINGHAM. May we have discussion?

Mr. FRASER. Surely.

Mr. BINGHAM. Why go into executive session for the markup?

Mr. FRASER. Well, I have to confess that I am just relying on a time-honored practice rather than examining the merits of it.

Mr. BINGHAM. My own feeling would be in line with the new rules that we have adopted. Unless we have a pretty good reason, a strong reason, to be in executive session we have no reason why we should do so and I don't see any reason in this particular instance.

Mr. FRASER. Anyone else have any views on this question?

Mr. MATHIAS. Mr. Chairman, this subject does not involve any national security. I don't think it makes any difference one way or the other whether it is open or executive, to tell you the truth.

Mr. FOUNTAIN. I assumed you had reasons for wanting executive sessions. Of course, I personally think all bills involving a markup should be in executive session. Otherwise the newspapers and

other media may get one impression one minute then 5 minutes later the discussion may be exactly the contrary to what that impression is and they may be gone. Then stories become distorted. Also, in executive sessions discussions will be more frank and forthright. If the subcommittee wants to open it up, I have no serious objection. However, I make the motion to go into executive session for markup of the bill.

Mr. FRASER. Mr. Winn, do you have a view on this?

Mr. FOUNTAIN. This is a sensitive subject.

Mr. WINN. Either way.

Mr. FRASER. You are willing to do it either way?

Mr. WINN. Yes.

Mr. MATHIAS. Mr. Chairman, I do note at the bottom of this sheet here that we do refrain from asking questions about the Seabed Committee. In a markup might it be involved in any security whatsoever?

Mr. FRASER. Mr. Mailliard has just suggested to me that during markup some matters pertaining to the current New York meeting might need to be discussed. Whether that creates a problem or not, I don't know.

Mr. BINGHAM. Mr. Chairman, if that does arise and if at any time during the markup we feel we have to go into executive session, we can vote to do so at that time. The only reason for having the rule so that we could state in advance that some meeting was going to be closed is for the convenience of witnesses and the press and so on. I don't see in this case why we would need to decide in advance. If the need arises at the time, we can do so at the time.

We are supposed to have a quorum for the markup anyway.

Mr. FRASER. Well, are you ready for the vote? Mr. Boettcher will call the roll.

Mr. BOETTCHER. Mr. Fraser.

Mr. FRASER. I will vote aye.

Mr. BOETTCHER. Mr. Fascell (absent).

Mr. Fountain.

Mr. FOUNTAIN. Aye.

Mr. BOETTCHER. Mr. Bingham.

Mr. BINGHAM. No.

Mr. BOETTCHER. Mr. Rosenthal (absent).

Mr. Reid.

Mr. REID. No.

Mr. BOETTCHER. Mr. Gross (absent).

Mr. Derwinski (absent).

Mr. Findley (absent).

Mr. Mathias.

Mr. MATHIAS. No.

Mr. BOETTCHER. Mr. Winn.

Mr. WINN. No.

Mr. BOETTCHER. Two ayes, four noes.

Mr. FRASER. All right. The subcommittee will hold an open markup session next Tuesday, March 27, at the conclusion of the 2d hearing. We will now resume our questioning of witnesses.

Mr. REID. I have just one more question.

Mr. FRASER. Perhaps you could repeat your earlier question to Mr. Pollock, now that he has returned.

Mr. REID. Thank you, Mr. Chairman.

Howard, while you were out of the room, I asked one question about subsection (4) on page 3 to which you were talking earlier and I raised the question which is a matter of interest to the subcommittee, and to Mr. Bingham and myself and most others about the fate of porpoises. We encouraged a resolution a while back relative to a moratorium.

My information, which is not totally current, indicates that at one point about 200,000 porpoises were being killed incident to the obtaining of offshore yellow fin tuna presumably well beyond the definitions in this case of coastal or perhaps host state—that is to say, clearly in international waters—and equally that the Japanese were killing about 20,000 according to allegations for purposes of oil.

My question is, as the porpoises and the tuna go together, and sometimes it is not clear who is following whom—at least the porpoises have not told us everything on this subject—what can we do to insure the future of porpoise schools which are diminishing according to some scientific and other evidence and how would you address yourself to that here?

Mr. POLLOCK. Well, I have to answer in several regards. First, we believe that that is covered in the "Statement of Conservation and Protection of Living Resources." To get to the specific problem that concerns you, we are heavily engaged both in the Government and in the industry in research on both gear and fishing techniques to alleviate what is a very serious problem with the fishing of yellow fin tuna.

As you may be aware, we have been working with the industry in trying to develop a variety of techniques, and one of them is a pneumatic drop gate which will allow the porpoises which are swimming over the yellow fin tuna to get out of the net as the vessels back off.

We worked with the development of a particular kind of small mesh netting which is called a medina net. The mesh is small enough so that the snout of the porpoise can't get caught in the mesh when they panic as the net is being closed.

We have tried techniques of simulating killer whale sounds and putting them in a proper place in relationship to the net to drive the porpoises out. The fishermen themselves are doing whatever they can to alleviate this problem. I think it does require training of the fishermen to operate their vessels in a manner that will save as many of the porpoises as possible.

Mr. REID. What troubles me about the language in our draft bill here is the phrase "regulated for maximum sustainable yield." Now if that is determined to mean maximum sustainable yield of tuna and the pursuing thereof and absent more effective mechanics than the ones you mention, which I grant you represent progress but not a solution, does there not need to be an international moratorium and agreement by the several bodies referred to in this resolution relative to porpoises?

I think if you rely on the sound of the killer whale, the trapdoor and the net and the smaller mesh, we will still have quite a few more porpoises departing this Earth and I personally think that would be a tragedy. Would you address yourself to what we could do legally?

I would refer further to the fact that the Japanese seem to have somewhat different purposes. I understand that our fishing industry is trying to do something about it, although not very successfully as yet, whereas I don't think the Japanese are even making that effort.

and in that case you need international law very clearly, it seems to me.

Mr. POLLOCK. We are discussing this in the international arena in a variety of circumstances. I think that if you were to press for a moratorium on the incidental taking of porpoises, the net effect of that would be the termination of the U.S. yellow fin tuna fishery. I don't think the moratorium is achievable. It may be a laudable goal.

We believe that it is possible through experimentation and through new techniques, new gear, to bring this loss down an enormous amount. We don't know what the international impact of this is. I want to say very clearly that it is distressing if we lose one porpoise in the entire process, but I think at this point it would be wrong to press for an international moratorium on the incidental taking of the porpoises.

Mr. REID. My problem with your phraseology, I understand the intent of your comments, but I find it hard to say when there are 200,000 porpoises being killed each year or numbers of that magnitude. That strikes me as not incidental and I am far from satisfied that the fishing industry has to, as the price of its existence, start to decimate the porpoises.

They used to fish through long lines among other approaches, and to assume that they have to continue precisely what they are doing with some modification as they go along, I don't think that is a message I would want to communicate to the porpoises.

Mr. BINGHAM. Would the gentleman yield?

Mr. REID. I would be happy to yield.

Mr. BINGHAM. I know the conference did adopt a 10-year moratorium with regard to whales. Do you know what the wording was with regard to the problem Mr. Reid just raised?

Mr. POLLOCK. I would be happy to furnish that to the committee. I don't have it here.

Mr. BINGHAM. If the gentleman would yield further, I would assume that our delegation on the Law of the Sea Conferences will take account of what was decided by resolution at the Stockholm Conference in all of these matters.

Mr. FRASER. Would the gentleman yield?

Mr. REID. Yes.

Mr. FRASER. I understood we recently completed arrangements for the endangered species. I am not familiar with it, but I assume that this might encompass the problem of porpoises.

Mr. MOORE. We would be happy to furnish copies.

Mr. POLLOCK. I think it might be useful to furnish that for the record also.

[The documents follow:]

#### RECOMMENDATION 33 ON WHALES FROM THE STOCKHOLM CONFERENCE ON THE HUMAN ENVIRONMENT

*It is recommended* that governments agree to strengthen the international whaling commission, to increase international research efforts, and as a matter of urgency to call for an international agreement, under the auspices of the international whaling commission and involving all governments concerned, for a 10-year moratorium on commercial whaling.

## TREATMENT OF INCIDENTAL TAKING OF PORPOISES AT STOCKHOLM CONFERENCE

The United States officially supported a 10-year moratorium on commercial whaling at the 1972 United Nations Conference on the Human Environment held at Stockholm last June. This ban was included within the resolution of the Conference as recommendation No. 33. The wording of that recommendation was as follows:

"It is recommended that governments agree to strengthen the international whaling commission, to increase international research efforts, and as a matter of urgency to call for an international agreement, under the auspices of the international whaling commission and involving all Governments concerned, for a 10-year moratorium on commercial whaling."

Although this recommendation specifies commercial whaling only, the U.S. Delegation to the Twenty-fourth Session of the International Whaling Commission (IWC), which followed the Stockholm Conference, construed the term "commercial whaling" to include commercial taking of small cetaceans as well as larger whales in seeking a global moratorium.

The United States was not successful in obtaining a global moratorium in the IWC, but did obtain general agreement that the IWC should concern itself with conservation of small cetaceans as well as large whales.

Mr. MOORE. My interpretation of the language of the resolution certainly also takes into account the need for conservation and protection of living resources, and I think that would include all living resources. So we could certainly interpret this as indicating a concern for living resources including those other than fisheries.

Mr. FRASER. Mr. Mailliard.

Mr. MAILLIARD. In our very interesting day with you in New York on Friday the subject seemed constantly to come up as to whether if some degree of exclusive authority out as far as 200 miles became the sort of accepted practice, that what would be left for any international control would probably, at least for the next decade or two, amount to practically nothing.

Do we know enough about the facts in this case to come to that conclusion as far as you are concerned?

Mr. MOORE. I think for the intermediate period if we are talking solely about the mining of manganese deals I am not sure that I would be prepared to characterize it in that way, but we would be prepared to say that a greater amount would be generated if it also included some revenue from the continental margins as well.

Our proposal has, for example, as one of the international standards in this broad area of the coastal state resource management authority the provision for some revenue sharing and that, of course, would alleviate this question of precisely where you place the limit. We don't feel that is as important an issue as insuring that this broad area of coastal state seabed resource jurisdiction, is also subject to a series of important international standards.

Mr. MAILLIARD. Then I would gather that our position is that while we might accept certain rights of the coastal state out to such a distance that it would not be exclusive.

Mr. MOORE. That is right. We are willing to agree as part of a comprehensive Law of the Sea settlement to broad coastal state resource management jurisdiction beyond the territorial sea, but that would be subject to a series of international standards. One, for example, would be protection for the integrity of investment, a second would be compulsory dispute settlement, a third would be preservation of the other uses of the area—particularly here the preservation of important navigation, free navigation interests and overflight in the area—and then

revenue sharing and minimum international standards to prevent pollution of the marine environment.

Mr. MAILLIARD. Thank you.

Mr. FRASER. Mr. Fountain.

Mr. FOUNTAIN. Thank you, Mr. Chairman.

I am sorry I didn't get a chance to hear your full testimony, Mr. Moore, but I was trying to read through some of it.

I was at the United Nations along with Mr. Broomfield in 1967 when this question, I think, first came up. I was on a subcommittee which was debating the advisability of a Malta resolution, I believe, which would convert all of the resources in the sea for the benefit of the undeveloped nations of the world. I think they debated it quite a period of time, a period of weeks. There was quite a record made on it and I don't think any country was prepared and they usually referred it to committee.

I think something worthwhile and meaningful, however, has come out of it since that time, but it is an essential subject and I think more and more countries, more and more people are coming to the realization that we have more material wealth in the ocean than we have in the skies and this is a subject that the nations ought to get together on because if we have the dog-eat-dog attitude, there is no telling what might happen.

I have just one question. I noticed in the resolution provision for substantial sharing of the revenues, and I think this is one of the most significant provisions of the draft treaty. I wonder if you could give us any idea as to how far you might have gone in the discussion of the formula for the sharing of revenues, how it might be distributed among the developing countries, for example, and under whose auspices?

Mr. MOORE. We have not specified beyond basically the formulation of the principle of some degrees of substantial revenue sharing as it appears in the testimony. This is an area that would be subject to the international negotiating process. We do feel that the principle is important in terms of—one aspect of it is that it would not place all of the emphasis, for example, on the limits issue precisely—what area would be under the control of the international regime and what area would be under broad coastal states resource management jurisdiction.

Of course, the revenues would be available also for the developing countries under some formula that would be negotiated but we have not yet spelled that out.

Mr. FOUNTAIN. Of course, I guess any agreement reached would have the effect of each country yielding some of its sovereign rights within the legal limits of that country, would it not?

Mr. MOORE. Well, I think part of the issue here is that we are talking about areas that basically have been under high seas freedoms, so that while some countries would claim that some of these areas were part of their sovereignty or their territorial sea—

Mr. FOUNTAIN. Some claim about 200 miles, don't they?

Mr. MOORE. Some states claim as far as 200 miles, but our approach would basically be that in international law we are dealing with areas of the high seas. We are certainly dealing with areas in which the legal regime is somewhat uncertain; for example, in the exploitation of the resources of the continental margin beyond 200 meters under the 1958

Geneva Convention on the Continental Shelf. So I would not want to characterize it as detracting from state sovereignty; it certainly would be clarifying in which areas the coastal state may exercise jurisdiction over seabed resources.

Mr. FOUNTAIN. I was prompted to ask that question because I understand that many of the nations assert that they do have the sovereign right of determining what their territorial jurisdiction is. I understand we have objections to that.

Mr. MOORE. We certainly do. I think any kind of unilateral claim beyond limits permitted under international law is not one that either any government spokesman or any international lawyer could accept. Rather, it is a process that very much depends on claim and counter-claim and reciprocity and it is not an accepted principle of international law today that any coastal state or any other state is free to make international law solely by unilateral claims.

So it is a question of looking at in general what has been accepted by the community of nations and we would apply that standard in all of these cases.

Mr. FOUNTAIN. Thank you, Mr. Chairman.

Mr. FRASER. Mr. Bingham.

Mr. BINGHAM. Thank you, Mr. Chairman.

I compliment you on your statement, Mr. Moore, and also join in welcoming our former colleague, Mr. Pollock, and your other associates.

I am delighted indeed with the general approach that you have outlined. Do I gather that with the exception of the one qualification that you raised about the language having to do with the 12-mile territorial sea, you do support the resolution and feel that it would be helpful to you in your negotiation?

Mr. MOORE. That is very much the case. We would strongly support the resolution. My understanding is that the intent of this resolution is really the same as Senate Resolution 82 and it really is a question of just clarifying that resolution with a few minor changes in language.

Mr. BINGHAM. I am also very much interested in the matter Congressman Fountain has just been asking you about. Personally I hope that down the road somewhere the sharing of these resources may be a major factor in solving the financial problems of the international organizations.

On the matter that Mr. Downing raised about industry being held back, is it not true that we are going ahead with the exploration of resources on the Continental Shelf even beyond the 12-mile limit?

Mr. MOORE. Well, it is clear under existing international law that the coastal state can exploit the resources of the Continental Shelf out to 200 meters. Beyond the 200-meter mark the test—

Mr. BINGHAM. Excuse me. That may in some cases be beyond the 12 miles.

Mr. MOORE. In some cases that definitely can be beyond 12 miles, absolutely.

Mr. BINGHAM. So they are not restricted as far as that is concerned?

Mr. MOORE. No; with respect to the Continental Shelf that is governed by the Continental Shelf Convention standard and 200 meters would be very clear.

Mr. BINGHAM. Nobody, I take it, is ready to go into the really deep-water exploitation at this point; isn't that correct?

Mr. MOORE. There has, I believe, been some exploitation beyond the 200-meter mark.

Mr. BINGHAM. No, I am sorry. I didn't make myself clear. Let me start over again.

What we are talking about is the intermediate zone, are we not, from the edge of the Continental Shelf, on the slope of the Continental Shelf down to the very water? Isn't that the area that we are talking about?

Mr. MOORE. Basically the intermediate zone under the U.S. proposal was the area from the 200-meter mark, or the territorial sea because the sea bed resource rights out to the 200-meter mark are very clearly in the coastal State out to basically the edge of the continental margin including the continental slope and continental rise—there are a number of different ways of differentiating it, but basically it would include most of that margin area.

So it really is the remainder of the continental margin from the 200-meter mark or the territorial area out to some geological formula yet to be devised that draws a fairly clear distinction as to the edge of the continental margin. Beyond that would be the area of the international seabed regime, which is basically the deep seabed, though the intermediate area would be an area subject to the international standards, which we have discussed.

Mr. BINGHAM. I understand.

Now getting back to Mr. Downing's question, To what extent are American industries ready to go as far as exploitation of the seabeds concerned beyond the 200-meter margin technologically?

Mr. MOORE. Technologically the capability certainly exists beyond 200 meters. As to what the outer limit of technology is at the present time, I don't know.

Mr. BINGHAM. What about economically?

Mr. MOORE. Economically in some areas I am reasonably sure it exists beyond 200 meters; in fact, I think economically it is presently taking place in some of the places of the world beyond 200 meters.

Mr. BINGHAM. So what we are hopeful of is that the treaty can be negotiated and then during this interim period that you mentioned, they would be free to go ahead.

Mr. MOORE. Well, the provisional entry into force relates to the machinery of the international seabed, the area beyond the intermediate zone.

Mr. BINGHAM. Beyond the intermediate zone?

Mr. MOORE. Beyond the intermediate zone so that basically the international machinery relates to that area. On the other hand, there is the intermediate zone and there is the question of the international standards operating in that area. So to the extent that the provisional regime or the international machinery were to relate to that, then of course the provisional issue would apply there as well.

Mr. BINGHAM. Well, I am confused now because I thought that the real question had to do with the intermediate area, not with the area of the really deep water operation.

Mr. MOORE. Our present policy with respect to the area beyond 200 meters, if we were discussing, for example, petroleum exploitation on the Continental Shelf beyond 200 meters is that we would not prevent such exploitation in the interim period which would occur as long as

that exploitation would be subject to the international standards, the international regime to be agreed upon.

Mr. BINGHAM. Is that true today?

Mr. MOORE. Yes.

Mr. BINGHAM. That they are free to do that today?

Mr. MOORE. Yes, I believe that is basically the language from President Nixon's ocean policy statement of May 23, 1970.

Mr. BINGHAM. Well, if that is the case, then they are not being held up at all substantially so long as they comply with these standards.

Mr. MOORE. I think that is basically correct.

Mr. POLLOCK. May I intervene for a moment?

Mr. BINGHAM. Of course.

Mr. POLLOCK. I think the companies don't have any protection from each other; there is no integrity of investment, there is no international or national body which would say this area is yours and no one else can come in here and overlap you or take manganese nodules from this area that you have marked off.

This is one of the major problems. I think the industry wants some protection in the interim period. I think what Mr. Moore was saying is that anything that is done today by the private entrepreneur we feel has to be subject to whatever regimes are agreed upon in the law of the sea in the future.

Mr. MOORE. I would add only one point to that if I could and that is beyond the 200-meter mark under existing international law and the Continental Shelf Convention legal rights are unclear so that there is a greater risk.

It is one of the great needs really for agreement in this area so that we can make these rights more certain.

Mr. BINGHAM. Just one final question in that regard. No. 4 in the standards in your statement is to provide royalties to be used for international community purposes, particularly economic assistance to the developing countries. There is no machinery for that now, so presumably any companies that are operating or even in that area would not be doing that today. Would that be your understanding?

Mr. MOORE. Certainly, the exploitation beyond the 200 meter mark would be subject to the international regime including any revenue sharing provisions of that regime.

Mr. BINGHAM. But at the present time there is no machinery?

Mr. MOORE. No; there is none at the present time.

Mr. BINGHAM. Thank you, Mr. Chairman.

Mr. FRASER. Mrs. Sullivan.

Mrs. SULLIVAN. Thank you, Mr. Chairman. I want to tell you how much I appreciate your inviting our committee to sit in on this hearing.

I will probably show my ignorance of the subject by a few questions I am asking. We are on two subjects about law of the sea right now, aren't we—on the mining rights of the sea as well as the fishing rights?

Mr. POLLOCK. We are on about five.

Mrs. SULLIVAN. Well, two that come to my mind.

Mr. MOORE. Two of the important ones.

Mrs. SULLIVAN. From your past experience and discussions, do you believe that the Latin American nations would be more difficult to negotiate with than other nations? I am thinking of some of the

fishing problems that we are having with the Latin American countries right now.

Mr. MOORE. The Latin American countries, like the other countries, are participating actively and in good faith in the negotiations leading to the Law of the Sea Conference. Our approach certainly is that the appropriate way to deal without disagreements on this is not through unilateral claims but through a multilateral Law of the Sea Conference.

Mrs. SULLIVAN. And if these discussions could be fruitful and the contents of the resolution that we have before us can be accepted, do you feel that Russia and the countries who were fishing off of our northeast coast now could be kept away from the type of fishing that they are doing at the present time so as to protect our own fishing industry?

Mr. MOORE. I think Mr. Pollock might answer that question better than I, but my general reaction would be that we are trying very hard to get the kind of multilateral convention that will achieve very broad consensus, and we would certainly hope that the Soviet Union and Japan and all the nations of the world would be signatories of that convention, and if they were, we would have a satisfactory regime for governing that kind of dispute.

Perhaps Mr. Pollock would have more specific points to add.

Mr. POLLOCK. Mrs. Sullivan, I would add to that the fact that distant water fishing countries by definition are those that fish off the shores of other nations.

On both our east and west coasts we have the U.S.S.R. and Japan fishing and taking a great deal of the fish in the international waters beyond our territorial seas and our contiguous fisheries zone.

In order to keep them in this ball game in the Law of the Sea Conference, and in the preparatory meetings of the U.N. Seabeds Committee, I think it is necessary to assure them that they will be given some consideration for historic fishing rights, whatever that might mean. It could mean as of 1973 or 1950 or some other period. I think if they were under the assumption that the only resolution of this conference would be to say there is not going to be any more distant water fishing, they would walk out.

So there is a problem of what you do and how far you bring them along and at the same time, how much preference to stocks you give to the coastal state itself. It is a very difficult area.

Mrs. SULLIVAN. Unless they will all cooperate in the negotiation—

Mr. POLLOCK. Then you have nothing.

Mrs. SULLIVAN. Then, you can't solve it at all.

One other question that came to my mind. Have you any idea—and this is in the fishing industry—what percentage of the gross national product is the fishing industry of these countries with whom you are going to have to deal? Is this one of their big industries?

In other words, this is why they are reaching out as far as they can and keeping people away from their own.

Mr. POLLOCK. Again, I think we could provide some information measuring the relative importance of fisheries in selected countries for the record for the committee, and certainly, to you Mrs. Sullivan.<sup>1</sup> It

<sup>1</sup> See appendix, p. 73.

is very, very important to some of the countries not only in the nature of the gross national product, but in the number of people who are engaged in the industry.

When you get into the distant water fishing business, you have a concentration of high investment. Each of these nations also has literally thousands of coastal fishermen including the poor little fishermen fishing for the resident species. It gets pretty mixed up as to what the economic and the political impact is.

Mrs. SULLIVAN. I am thinking of the problems we have had with the northeast area of our own country where we do not have the efficient fishing vessels that other countries have, and yet, this is their source of earning a living. While it is not one of the big percentages of gross national product, but it is a type of living for many of the people of that area.

That may be true in some of these countries who have a vast export industry with fish and—

Mr. POLLOCK. We find in this country, and I don't think it would be too different in other developed countries, that probably 85 percent of the fishing industry of the entire country is the resident fishermen, the coastal fishermen, and that is the poorest part of the entire industry.

The tuna fishery and the fishery for shrimp and for lobsters are our healthiest portion of the industry.

Mrs. SULLIVAN. I think this is where the negotiations are going to take on a more personal atmosphere for the country which has a greater—well, something more to lose than we might have when ours only touches certain areas of this country.

Mr. POLLOCK. That is what is pushing some of the South American countries and others to say, "Look, we don't want an economic zone, we want 200 miles and you stay out unless we let you come in."

Mrs. SULLIVAN. We were approaching that subject the other day in our Merchant Marine and Fisheries Committee and have not concluded our hearings but if we could have some information along that line, I think it would be helpful for our committee.

Thank you very much. Thank you, Mr. Chairman.

Mr. FRASER. One of the objectives of our draft treaty is the right of free transit through international straits. We also are advocating a 12-mile territorial sea. Access to the Mediterranean would be lost unless there is some special provision for transit through the Straits of Gibraltar. On the other hand, it seems to me that the coastal states can make a legitimate argument with respect to potential pollution. How do we deal with that in our draft?

In other words, we have an interest in free transit and the coastal states has a legitimate interest in potential pollution. How do we reconcile that?

Mr. MOORE. I think that is a good way to approach the problem trying to sort out the legitimate interests of all participants in the process.

Certainly, the interest that we are concerned with is the question of free transit through and over international straits, that is simply the ability to transit this area from one side to the other free from restriction as to mode or other subjective criteria.

We have indicated a willingness with respect to safety standards, for example, to have surface vessels comply with the provisions of IMCO

traffic separation schemes, in fact, we have urged that such separation schemes be compulsory.

We have also indicated that normally state aircraft exercising the right of free transit should comply with ICAO safety regulations as they apply to civil aircraft over the high seas and that such aircraft should always operate with due regard for the safety of aerial navigation.

In addition to that, we have indicated that the question of liability could be solved by having some kind of strict liability for violation of IMCO traffic separation standards or ICAO overflight standards.

In addition, with respect to the pollution control area, we have indicated an interest in complying with internationally approved standards that would be applicable to commercial shipping.

Mr. Stuart French of the Department of Defense might have a more specific response on that question.

#### STATEMENT OF STUART FRENCH, PRINCIPAL ASSISTANT TO THE ASSISTANT SECRETARY OF DEFENSE FOR INTERNATIONAL SECURITY AFFAIRS, DEPARTMENT OF DEFENSE

Mr. FRENCH. Well, Mr. Moore has given an excellent dissertation of the straits problems. I would only add that if agreement is reached on a 12-mile territorial sea, even in those straits which heretofore had not been the territorial sea of a coastal state, unquestionably the right of innocent passage would be preserved in any new international treaty. Innocent passage, however, requires transit on the surface and prohibits overflight of aircraft without authorization or consent.

However, in these straits, national security interests require that both the right of submerged transit and the right of over-flight be preserved. We do indeed need a treaty provision that will essentially preserve the current rights that are now enjoyed under international law in those straits which are wider than 6 miles.

Mr. FRASER. Regarding pollution control, we would want in part to avoid national standards which might become arbitrary or might be used unreasonably, would we not.

Mr. MOORE. Yes. I think also we feel that the most effective way to deal with the problem of marine pollution is through international standards, includes ship construction standards.

Similarly, the safety issues that deal with accidental causes of oil spills and other causes of marine pollution can be dealt with by internationally-agreed traffic separation standards.

We feel that an international approach to standards for the protection of the marine environment is a very basic point and that it is a preferable way to approach the question of pollution control regulation.

Mr. FRASER. Supposing that the conference fails to guarantee the right of free transit and that it defers on the coastal states almost all of the attributes of sovereignty in 200 miles which some states are claiming.

It would be my impression that it would be a very worthless convention from the point of view of the United States and that we would probably want to consider opposing their signature ratification. That is my view.

I put that in the form of a question to you. Maybe it is not fair to have you comment on that at this point, but if you can, I would be interested.

Mr. MOORE. Yes, I think it is a fair question and certainly an important one.

We feel very strongly that it is important that this Conference not fail. The resolution that this committee is considering today would strongly put this committee and Congress on record behind the U.S. position and as such I believe that it will help us significantly in achieving success in the Conference.

But we do have a variety of important interests and we will not sacrifice those interests.

We have indicated, for example, with respect to the question of free transit through and over international straits that it would not be possible to have a successful Conference on the Law of the Sea that did not accommodate those interests.

Mr. FRASER. I think it would be useful to get the answer to this question on the record.

How does a convention of this kind become effective? Here we have a large number of nations involved.

Mr. MOORE. There were 132 nations, at last count, which were members of the United Nations.

Mr. FRASER. What does it take in order for the convention to acquire the force of law?

Mr. MOORE. That is a thorny question. In international law, all of the signatories of the convention will be bound between themselves as soon as enough ratifications are received for the convention to come into force. The more difficult question is how many members of the international community must sign a multilateral convention for it to become binding on a state that didn't sign.

That is really a question of looking at all of the circumstances, it is a question of the acceptance through time of the obligations embodied in that convention as public international law.

We feel that it is very important that any convention which emerges from this Conference be widely accepted by the states of the international community. We would hope that the outcome of this Conference will not be one of only limited acceptance, for example, as was true of the conventions emerging from the 1958 and 1960 Conferences. It is very important that any new convention be a widely accepted accommodation that would be acceptable to most, if not all, of the nations of the world.

Mr. FRASER. Well, will the convention contain a provision which makes a declaration as to what point of it becomes effective? Will it require a certain percentage of signers and then when that number has been reached and those states have ratified it, that the convention becomes effective with respect to the nonsigners?

Mr. MOORE. Two questions. First, when does it become effective with respect to the signers; and second, with respect to the nonsigners? With respect to the signers, normally there is a period of time after signature in which the states sign on before the requisite number has ratified it. At this point when the requisite number have ratified, it immediately comes into effect between all of the states that have ratified.

Subsequently, as the additional states ratify or adhere to the treaty, it becomes effective between existing parties and the new states.

With respect to the second question concerning nonsigners, it is really a question of saying at what point do enough states ratify it or sign and it becomes international law and accepted general obligation.

Mr. FRASER. But I mean will the document itself make an assertion as to where that point is to be found?

Mr. MOORE. Not on the customary international law point because it depends on a whole complex process. With respect to the parties themselves, yes, the convention itself if it follows the normal pattern for multilateral conventions—and I think it would—would indicate the number of states that must ratify before it would go into effect.

Mr. FRASER. Let's suppose we get a convention that turns out to be unacceptable to the United States but is acceptable to the large number of other countries, would we be in a position to both not decline to sign it and then decline to observe its provisions.

Mr. MOORE. My own feelings are that if the Conference has the kind of failure that results in a convention that the United States would not be able to sign then there would be little likelihood of it getting wide acceptance or wide adherence. Under the circumstances of such a failure the existing regime of international law would continue.

Mr. FRASER. Absent any new convention.

Mr. MOORE. Absent any new convention which the United States specifically agreed to or a very widely adhered to multilateral convention which through time became customary international law.

Mr. FRASER. I just have one other question relating to mineral resources. It was my impression—I may have misunderstood the exploitation of nodules—that this variety of minerals is in the deep sea area, not on the Continental Shelf.

Am I mistaken about that?

Mr. MOORE. No, I think you are quite right. I am not certain of the exact location of all of these concentrations, but my understanding is, as is yours, that basically these are phenomena of the deep ocean floor.

Mr. FRASER. I think you said in answer to another question the provisional regime which would become effective under our proposal upon the signing, but prior to ratification, would be the regime having control over the deep sea resources.

Mr. MOORE. That is right, basically the international regime dealing with at least the area of the deep ocean floor.

The question of limits has not yet been determined. Our position is that if it is clear that a series of international standards apply in the intermediate zone, the question of limits becomes somewhat less important.

Mr. FRASER. I guess I am getting to the question of revenue sharing in the intermediate zone. Would that concept be embraced in the provisional machinery that we are proposing?

Mr. MOORE. It is very clear certainly with respect to the International Seabed Authority which is going to be dealing with the resources of the deep ocean floor that the concept of revenue sharing would be a major principle that would be applicable.

In that area, our proposal for provisional entry into force of the permanent regime would also include the principles of the Interna-

tional Seabed Authority, so that as the regime came into effect, the revenues that were generated, at least the royalties that would be paid in the form of revenue sharing, would be held. One possibility is they could be held in escrow pending the entry into force of the convention itself, so that you know which countries were on board.

Mr. FRASER. I just took that last answer to deal with revenues coming from the deep sea. What about the intermediate zone?

Mr. MOORE. In the intermediate zone, we really have not clarified the details of revenue-sharing beyond indicating that any exploitation beyond 200 meters should at the present time be subject to the international regime.

So it would partly depend on spelling out that standard of revenue sharing in the intermediate area, and it would partly depend on the question of what the limits are to be which would be agreed upon by the conference.

Mr. FRASER. If the draft provides for revenue sharing in the intermediate zone, would the revenue sharing take effect under the provisional arrangement in the intermediate zone with respect to revenue sharing as well as the deep seabed?

Mr. MOORE. I think again it depends on where the limits are, where it is drawn. Whatever the area beyond national jurisdiction that the international machinery applies to then the provisional entry into force concept would also apply. Beyond that we have not yet clarified other possibilities for provisional application.

Mr. FRASER. I see.

Mr. POLLOCK. It would depend on the nature of the provisional machinery. If it provided for it, I think that is the simple answer.

Mr. FRASER. How can you have machinery in the absence of ratification?

Mr. MOORE. We have had precedents for provisional application with respect to a number of other conventions.

For example, the Chicago Convention on Civil Aviation which established our basic machinery for regulation of civil aviation. After a large number of states signed it, they set up the provisional entry into force of the regime pending ratification.

You have reasonable assurance, and sometimes through the provisional entry itself, you can increase the assurance that a large number of states will ratify or adhere. In fact, we feel that the concept of provisional entry into force is going to help protect the integrity of the permanent machinery.

Mr. FRASER. Any further questions?

Mr. BINGHAM. Yes, Mr. Chairman, if I may.

I still don't think it is entirely clear. Mr. Fraser, the chairman, was asking about this, and I was asking about it. I don't think it is entirely clear what will happen to the application of these international treaty standards that you set forth on page 4 in paragraph 3 during this interim period.

I would suggest that what you are saying is that you have not gone far enough to know just what will happen. For myself, I would like to urge that, at least so far as some of these standards are concerned, and particularly the provision of royalties, the interim machinery be applicable to the intermediate area as much as to the deep ocean area.

If you don't have machinery to encourage or require this revenue sharing, it is not going to happen.

Mr. MOORE. We differentiate there between an interim period and a provisional entry into force period. The interim would be the period from the present until the time the convention is signed. The provisional period is basically from the time you really have agreed on the outlines of the general machinery itself, the principles and the regime by signing the agreement and the time the agreement goes into force.

Now, the extent that the international machinery applies to this area is a question of limits which has not yet been decided by the conference and will be one of the issues to be negotiated.

Mr. BINGHAM. But won't the application of the machinery be to this intermediate zone, whatever the conference agrees may be the intermediate zone?

Mr. MOORE. I think that is one of the issues that will be ultimately decided by the conference. We have spoken in terms of an intermediate area which gives the coastal states basic management of resource jurisdiction subject to certain kinds of international standards.

We have not spelled out the standards beyond the degree of specificity indicated here because much of that subject to the negotiations which will go forward on the issues.

Mr. BINGHAM. Well, my point, if I can repeat it, is that unless there is some machinery to oversee the application of these standards in that intermediate zone, it seems to me most unlikely that there is going to be any revenue-sharing.

Let me pass to another question. I was fascinated by the concept that you must provide for underwater passage in straits such as the Strait of Gibraltar.

Does that mean that we may have to come to two kinds of limits, that you might have the 3-mile limit still within which underwater passage would not be permitted and the 12-mile limit where you would permit underwater passage in a strait?

Mr. MOORE. Not under the present draft straits article.

Mr. BINGHAM. Well, how are you going to avoid it without saying that you are going to have underwater passage right up to the coastline?

Mr. MOORE. One of the difficulties with the doctrine of innocent passage is that in the past it has been interpreted by many states to mean that there could not be submerged transit through the territorial sea, even areas of the territorial sea which overlap straits used for international navigation.

This difficulty is compounded if we were to apply the doctrine of innocent passage to the large number of straits in the international community that would be blocked off by this increase in territorial sea from 3 to 12 miles.

Do you have something to add to that?

Mr. FRENCH. If we accept the proposition that under international law as of today 3 miles is the breadth of the territorial sea of a coastal state, then any strait that is in excess of 6 miles in width has within it a corridor which could be called a high seas corridor in which the uses of the high seas would be permitted. Once a 12-mile territorial sea becomes legally recognized, there will be something on the order of 116 straits in the world which are wider than 6 miles but which suddenly would become a territorial sea. Under the Territorial Sea and Contiguous Zone Convention submarines must transit on the surface

and overflight of aircraft is prohibited without consent of the straits state. Thus, confirming my earlier statement if nothing more were said, and we merely agreed on a 12-mile territorial sea, I believe that innocent passage would still prevail.

Mr. FRASER. Let me make one other point that struck me at the Seabed Committee meeting in New York. I had inquired about the matter between the landlocked states and coastal states with respect to larger coastal state jurisdiction, but the more I reflect on it, it seems to me it is much more complex than that. Some coastal states must be much more blessed with an extensive continental shelf or great potential mineral resources in comparison with other coastal states which may have very little. Those that are blessed—if we accepted the view of some of our friends from Latin America—would get the riches for their exclusive use and the landlocked states would have no access to the fruits of those resources. This would also be the consequence for other coastal states, which are not blessed by nature in this way.

Mr. POLLOCK. That is correct.

Mr. MOORE. That is a very good point. For example, some coastal states now are being lumped into a different category, not only landlocked states but also coastal states with short coastlines. These states are beginning to realize that they, to some extent, may share the same kinds of interests as landlocked states.

Of course, the breadth of the Continental Shelf varies largely and the range of fishery stocks also varies.

Mr. FRASER. In other words, there must be some coastal states who really don't have very much off their coast.

Mr. MOORE. Absolutely.

Mr. FRASER. While there are others which have a great deal. The question is whether we can arrive at some equitable system whereby all nations, landlocked or coastal or otherwise, will in some way enjoy some of the fruits of these resources.

Mr. POLLOCK. Some of the coastal nations have virtually no Continental Shelf, others have all shelf and no deep ocean. Some have very long coastlines and others have very short coastlines.

Mr. FRASER. It seems to me you are arguing strongly for the intermediate zone in the form of revenue sharing, why the world community itself can get some of the benefits of it.

Mr. Mailliard, do you have any questions?

Mr. MAILLIARD. No.

Mr. FRASER. A note I have here suggests that some of the states with a wide Continental Shelf, presumably with much to gain from a 200-mile limit, would be the United States, Australia, the Soviet Union and Canada so that we are taking a very enlightened approach by urging this concept of a mixed international coastal state arrangement in the intermediate zone.

Mr. MOORE. Yes, I think that is the case. I think this would be an approach that would be in the community common interest. It is also, we believe, a realistic approach in the sense that it enables a reasonable accommodation between the competing interests that will be participating in the Conference.

Mr. FRASER. We appreciate your testimony today, and we wish you well in your negotiations.

I hope that we will be able to be of some assistance in reflecting congressional support for your negotiating efforts.

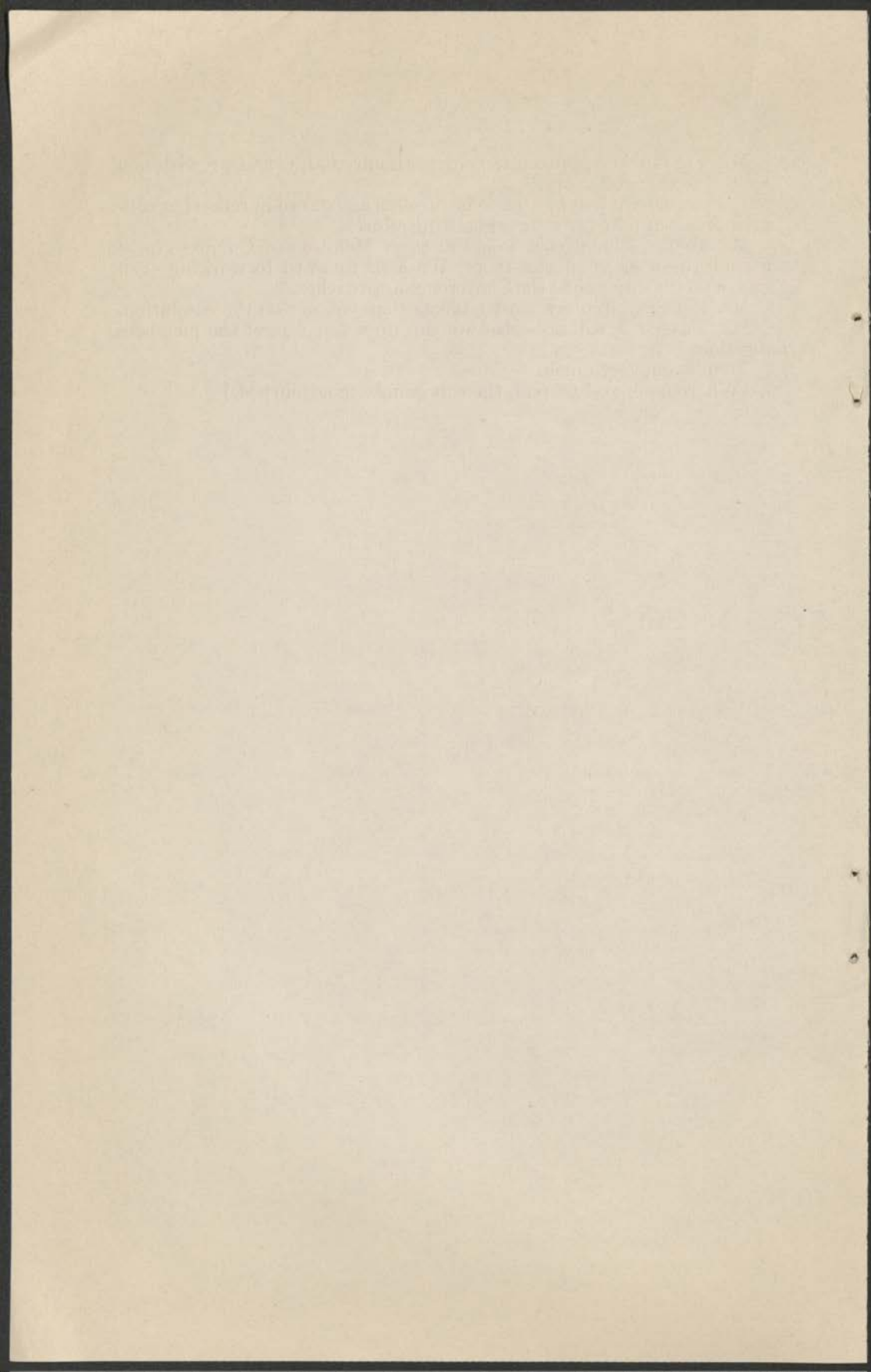
Mr. MOORE. Thank you. You and other Members of Congress have already been of great assistance. We look forward to working even more closely with you as the Conference approaches.

Mr. POLLOCK. We are most anxious that you act on the resolution.

Mr. FRASER. I will see what we can do when we get the members together.

Thank you, very much.

[Whereupon, at 4:06 p.m. the subcommittee adjourned.]



## LAW OF THE SEA RESOLUTION

TUESDAY, MARCH 27, 1973

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON FOREIGN AFFAIRS,  
SUBCOMMITTEE ON INTERNATIONAL  
ORGANIZATIONS AND MOVEMENTS,  
*Washington, D.C.*

The subcommittee met at 2:10 p.m. in room 2200, Rayburn House Office Building, Hon. Donald M. Fraser (chairman of the subcommittee), presiding.

Mr. FRASER. The subcommittee will come to order.

Today we continue our consideration of House Resolutions 216 and 296, identical resolutions endorsing U.S. objectives for a just and effective ocean treaty.

Perhaps it would be helpful before we hear from our witnesses to review briefly what was discussed at last week's hearing. The executive branch testified in strong support of these resolutions, characterizing them as "a clear demonstration of congressional interest in achieving a just, rational, and peaceful order for the oceans."

Regarding transit through international straits, it was suggested that by using the language of Senate Resolution 82—whose intent is identical to that of the two House resolutions—it would be clearer that in international straits with an area overlapped by a 12-mile territorial sea, support is being given to free transit through and over those straits.

We will place in the record at this point the straits paragraph from both House Resolution 216 and Senate Resolution 82.

[The information follows:]

[H. Res. 216]

"(1) protection of the freedom of the seas, beyond a twelve-mile territorial sea, for navigation, communication, and scientific research, including unimpeded transit through international straits;"

[S. Res. 82]

"(1) protection of (a) freedom of the seas, beyond a twelve-mile territorial sea, for navigation, communication, and scientific research, and (b) for free transit through and over international straits;"

Mr. FRASER. In addition, the executive branch witnesses asked for clarification through an explanation in the committee report or by amendment, to the effect that the resolution support management of anadromous species of fish by the coastal state of origin, or host state as it is sometimes called.

The subcommittee will consider these suggestions in the open markup sessions to be held this afternoon at the conclusion of this hearing.

We heard official testimony from the executive branch last week,

and our witnesses today are private citizens with special expertise in the law of the sea. One of them—although a private citizen now—was for most of the preceding decade one of the world's most prominent international statesmen, former Secretary of State Dean Rusk. He is now professor of international law at the University of Georgia and participates actively on the Advisory Committee on Law of the Sea of the executive branch.

We are also pleased to welcome Mr. M. A. Dubs, director Ocean Resources Department of Kennecott Copper Corporation; Mr. Lowell Wakefield, past president of Wakefield Fisheries of Alaska; and Mr. Northcutt Ely, attorney at law with wide experience in petroleum matters.

It has been agreed that the witnesses will appear this afternoon as a panel. We ask that each of the witnesses make their statements and then be questioned together as a panel.

Mr. Secretary, it is a special privilege to welcome you here today. We are fortunate that you could be here for our hearing and we look forward to your testimony. Please proceed as you wish.

**STATEMENT OF HON. DEAN RUSK, FORMER SECRETARY OF STATE;  
MEMBER, ADVISORY COMMITTEE ON LAW OF THE SEA**

Mr. Rusk. Thank you, Mr. Chairman. I thank you for allowing me to come here today to express my support for House Resolution 216. I compliment those who have sponsored it and hope that the resolution will be adopted by the Congress by a large nonpartisan vote.

The stakes are very high on the issues to be considered by the forthcoming Law of the Sea Conference. The governments of the world have a crucial decision to make. Unless the law of the sea is brought up to date by general agreement among nations within the next 2 or 3 years, we may see a national race for the control of open oceans and seabeds comparable to the race for the control of land areas of the past 3 centuries.

The dangers and costs of such a race are difficult to imagine. It would be sheer insanity for mankind to go down that fork of the road. I realize that warnings of future perils are usually discounted by those who are preoccupied by the problems we already have on our plate. But controversy and conflict between coastal states and long-distance fishing nations, direct rivalry among those with the technological capacity to exploit the seabeds and between that group and the large majority of nations without such capability are clouds on the horizon which we dare not ignore.

It is encouraging to see the bipartisan support behind House Resolution 216. Both our national interests and the peace of the world are so deeply engaged, it is difficult to see how partisan differences are relevant.

There will be differences of view among us, for some of the issues involved are extraordinarily complicated and honest men can disagree with each other. But the beginning of wisdom in a complex negotiation of this sort is a clear national policy on the part of both the executive and legislative branches in order that our negotiators can be surefooted in discussions with other nations.

It is doubtful if any nation, including the United States, can achieve every point it has in mind at this stage of negotiations. It may well be that some difficult choices will have to be made along the way.

I do not know what arrangements are contemplated within our own Government, but I would strongly recommend effective consultative procedures by which the executive and Congress can keep in touch with each other as the negotiations proceed.

Since there are several committees of Congress which have a legitimate interest in one or another aspect of the questions before the Law of the Sea Conference, it might be advisable to constitute an informal ad hoc group in the Congress to facilitate consultation.

I realize that this would not be a usual procedure, but the range and importance of the matters presented might justify special arrangements.

The present agenda for the Law of the Sea Conference embraces the territorial sea, narrow straits, environmental concerns, fisheries, the exploitation of the seabeds, and scientific research, topics which break down into more than 90 subtopics. An obvious question is whether too much is being attempted at one time.

In a purely technical sense it might be possible to separate the various subjects, but it is clear that they are so interrelated from a political and negotiating point of view that they must be considered together.

Even so, one might imagine that several treaties might emerge from the conference. I assume that when House Resolution 216 uses treaty in the singular, it is not intended to foreclose a family of treaties.

On the specific issues alluded to in House Resolution 216 which are before the Law of the Sea Conference, we start from the fact that the conventions of 1958 and 1960 left a good deal of unfinished business.

For example, the width of the territorial sea was left undefined; the extent of the Continental Shelf was subjected to the possibility of exploitation; the jurisdiction of coastal States over the living resources in the sea beyond the 12-mile limit has continued to be highly controversial; the treatment of narrow straits left much to be desired from the point of view of the maritime nations. I have in mind, for example, over flights and the passage of submerged submarines.

Surely the time has come for the United States to move to a 12-mile territorial sea. In retrospect it is unfortunate that we did not do so at the time of the conference of 1958 and 1960, because it might have been possible at that time to get general agreement on that basis.

At present, the simple truth is that a 3-mile limit is dead and that continued adherence to it is nothing more than a self-denying ordinance in a world where the majority of nations assert a wider limit. I believe at latest count some 89 nations are asserting a territorial sea beyond 3 miles, and less than 30 still cling to the 3-mile limit.

We do not attempt to enforce a 3-mile limit against other nations claiming up to 12 miles; during the 1960's my colleagues and I initiated interdepartmental consultations looking toward a 12-mile boundary.

It might be worth noting that the outer boundary of the territorial sea is not a wall which determines the jurisdiction of the coastal states in a rigid fashion. It is more like a rubber band which bends inward for innocent passage, the right of refuge in distress, and perhaps innocent navigational error. The rubber band bends outward, if necessary, for the enforcement of customs regulations in certain circumstances, for public health necessities, for air traffic control purposes, for self-defense in certain contingencies, and possibly for environmental protection.

As we move from a 3-mile to a 12-mile territorial sea, more than a hundred narrow straits connecting two parts of the high seas will be absorbed by territorial waters. It seems to me to be of considerable importance that a new look be taken at what has been considered to be the law with respect to narrow straits.

It would be most unfortunate if the coastal states should attempt to impose burdensome restrictions upon free passage and international commerce. These are matters which should be the subject of international agreement and should not depend upon the national decisions of whatever governments might be in power in the coastal states.

One can imagine that there are certain straits with high density traffic in which some regulation would be appropriate in order to avoid collisions. I can also imagine that such precautions might be required for the passage of vessels such as huge oil tankers which might represent some threat to the coastal states in the event of disaster.

We should do our best, however, to insist upon the maximum freedom of passage, including overflights of narrow straits and the passage of submerged submarines.

With regard to environmental matters involving the oceans, I am not at all clear that we should attempt to deal with that subject comprehensively in the Law of the Sea Conference which will have no ongoing existence or responsibility.

In the first place, there are many things which we simply do not know enough about to give us a basis for acting wisely at this time. Second, since the measures to be taken will have to be taken by states individually, I would regret a convention on marine pollution which would represent the least common denominator of the present attitudes of governments.

It might be wise for the Law of the Sea Conference to agree that environmental and pollution questions should be handled by the new machinery established by the United Nations for environmental matters under the fine leadership of Mr. Maurice Strong, of Canada, and to such bodies as the Intergovernmental Maritime Consultative Organization, already very active in that field.

Of course, what the Law of the Sea Conference decides to do about such questions as fisheries and the exploitation of the resources of the seabeds should take into account the environmental aspects of such particular questions.

The question of fisheries will present many difficult problems of negotiation because of the different interests which are obviously involved. I would not wish to add to the burdens of our negotiators by trying to anticipate all the difficulties they might encounter.

Given the great variety and circumstance in different parts of the world with respect to the living resources of the sea, it is possible that regional arrangements may prove to be more practicable than a general worldwide system.

Let me say, by the way, that, although you mentioned that I am serving on the advisory committee, my remarks today represent in no sense the executive branch of the Government.

Looking ahead to rapidly growing populations and increasing dependence upon the sea for protein resources, I am attracted by an approach based upon species management. We should not be unduly committed to simplicity where the factual situation is very complex.

Although there are conflicting interests involved, and these are well known to this committee, there is a general interest in maintaining an optimum population of fish available for harvesting.

I agree with the general approach taken thus far by the U.S. Government which would give the coastal states substantial responsibility for the management of coastal and anadromous species, but I do not underestimate the problems of effective arrangements with respect to anadromous fish such as salmon which travel for hundreds of miles out to sea.

On the subject of fisheries as well as other Law of the Sea topics, we must bear in mind that it might be difficult to establish generally recognized international law by a two-thirds vote of a conference or by a convention or conventions ratified by two-thirds of the nations of the world if the dissenting one-third include important groups of countries whose assent may be essential to effective international law.

On no subject will the attitude of the Congress be more important than on new international arrangements for the exploitation of the seabeds. The developing countries have taken a strong view that they are entitled to a reasonable share in the returns from this "common heritage of mankind" and that such resources should not become a monopoly of those with the advanced technology required for exploitation.

The Congress will have to consider how we combine an opportunity which will attract the necessary capital and technology on the one side with a reasonable contribution of a part of the proceeds to the pressing needs of the developing countries.

I am attracted by the idea of a special zone under the management of the coastal state within the standards established by the international community. The acceptability of such an idea may depend upon a reasonable response to the interests of the developing countries whose present hopes and expectations may far exceed the economic return which may reasonably be expected from such activities.

Given the substantial amounts of capital which will be required to exploit the resources of the seabeds, it is doubtful that a small percentage of net profits after taxes would satisfy the developing countries.

The Congress will have to decide whether the resources of the seabeds are of such importance for the long-range future as to make it worth your while to share with the developing countries a portion of the taxes which would normally be assessed on an American company engaged in such activities.

We face the possibility, if I may use the phrase in these halls, of a filibuster by the developing countries which might unfortunately postpone indefinitely a generally agreed international regime with respect to the resources of international seas.

I personally feel that the long-range outlook for vital resources is so serious that we should make it clear that an indefinite postponement is not acceptable.

Perhaps the dozen or more countries who are now developing the technology for such exploitation should, in that event, get together and make their own arrangements among themselves with due regard for the legitimate interests of the developing countries. Again, I am speaking for myself and not for the executive branch.

I hope that undue difficulty will not arise with respect to scientific research. I would draw a clear distinction between scientific research whose results are made public as promptly as possible and the kind of research which leads to business secrets, restricted information, or national advantage.

I would hope that coastal states would accept legitimate scientific research within their territorial waters subject to the right of the coastal state to have observers on board the research vessel if that is desired.

We need to know a great deal more about every aspect of the oceans than we now know if we are to act wisely in the future for the human species on this planet. Maximum freedom and maximum openness seem to me to be the proper basis for such activity and, I might add, substantial additional resources committed to ocean research.

I close, Mr. Chairman, with a simple reminder of a point which I have already made: we stand at an important fork in the road. The law of the sea can be a subject which can strengthen the common interests and the unity of the family of man or it can lead to controversy and conflict.

I see no rational basis for taking the second fork. It seems to me that House Resolution 216 aims us in the other direction and I am glad, therefore, to support it.

Thank you, sir.

Mr. FRASER. Thank you very much, Mr. Secretary.

Our next witness is Mr. M. A. Dubs, director of the Ocean Resources Department, Kennecott Copper Corp.

**STATEMENT OF M. A. DUBS, DIRECTOR, OCEAN RESOURCES DEPARTMENT, KENNECOTT COPPER CORP.**

Mr. DUBS. Thank you very much, Mr. Chairman.

I am a member (Expert) of the U.S. Delegation to the United Nations Seabed Committee, a member of the U.S. Department of State's Advisory Committee on the Law of the Sea, and a member of the Ad Hoc Committee on Undersea Mineral Resources of the American Mining Congress.

However, my statement today reflects only my personal opinions.

I very much appreciate this opportunity of appearing today before the House Foreign Affairs Subcommittee on International Organizations and Movements to present testimony on House Resolution 216, "Law of the Sea Resolution."

As this resolution so properly states at the beginning of its preamble, "the oceans cover 70 per centum of the earth's surface, and their proper use and development are essential to the United States and to the other countries of the world."

I most strongly affirm this essentiality and applaud this initiative of the Congress in encouraging the achievement of a timely and successful Law of the Sea Conference.

My testimony today will seek to reinforce the basic purposes of House Resolution 216.

To begin with, I have a few remarks on what I perceive as the high policy basis of this documents; namely, the recognition by Presidents Nixon and Johnson of the need to modernize existing ocean law to prevent conflict and to assure orderly and peaceful development of the ocean resources.

This recognition was elaborated in President Nixon's May 23, 1970, ocean policy statement, a document which I and many others ascribe to as a succinct summary of the basic elements of desirable U.S. ocean policy.

The task of implementing this ocean policy is difficult and requires the highest skills of diplomacy and negotiation as some of the most basic tenets of this policy are not universally accepted by other states.

For example, some nations, and I would put the United States in this category, want to preserve with modernization most of the traditional freedoms of the sea and to provide means for the harmonious and fair exploitation of ocean resources newly made exploitable by the application of recent and rapid technological progress.

Many nations, and in particular the developing nations, propose abolishing traditional freedoms and replacing all present ocean law by a completely new structure providing for strict regulation and control of absolutely all ocean activities. Other examples might be given, but this one illustrates both the problem and the need for supporting and encouraging the United States delegation in their demanding task.

The U.S. Draft Seabed Treaty of August 1970 is stated by the resolution to be a practical method of implementing our U.S. ocean policy. Undoubtedly, the submission of this document as a working paper to the Seabed Committee was a major contribution to the work of the Committee.

However, it does not, of course, contain all elements of our ocean policy, nor does it enjoy the unqualified support of all in the United States.

This hearing is not the time to reanalyze the U.S. draft treaty. Furthermore, it is also true that various criticisms of and needs for changes in the document are well known to the Law of the Sea Task Force. These can be taken into account in the process of negotiating a seabeds treaty since many other elements proposed by other nations will have to be negotiated at the same time.

Of even greater importance to the considerations of this committee and the Law of the Sea negotiators is that the rapid progress of technology, the changing viewpoints of other states, and the more complete information available to all on this complex matter has somewhat altered the situation from that envisioned when the August 1970 draft treaty was tabled.

These new factors must be taken into account, and I commend to the committee as basic current policy documents the statement made by Mr. John R. Stevenson, the then U.S. Representative to the Seabed Committee, on August 10, 1972, in Geneva. I would also attach great importance to the statement made by Mr. John N. Moore, the present U.S. Representative to the Seabed Committee, on March 19, 1973, in New York on the subject of a provisional regime.

These statements in my view provide an updated view of the implementation of the President's May 23, 1970, statement of ocean policy.

I also most heartily endorse the preambular statement which states, "It is in the national interest of the United States that this Conference should speedily reach agreement on a just and effective ocean treaty."

With respect to the mineral resource question, it must be noted that the rapid advance of the technology of ocean exploitation is outdistancing the international political process. Access to ocean resources is of great national importance to the United States. This does not, of course, mean abandonment of the concepts of sharing benefits with mankind.

These resources are essential to our economy and can provide both employment for U.S. citizens and reduction of imports with their attendant balance of payments effects. As you know well, this question of importation of critical resources is becoming an increasingly crucial element in foreign relations.

Often overlooked because of the preoccupation with benefit-sharing is the potential for conflict in resource questions. Although the situation is not critical today, it may be tomorrow with increasing pressure on resources, particularly in all developed countries.

If a timely and satisfactory treaty of universal character is not achieved, then it will be necessary on the basis of both economic resource requirements and minimizing potential for conflict to seek other means of achieving the same ends. The previously mentioned speech on a provisional regime by Mr. John N. Moore covers important aspects of this problem.

The resolution also notes in the preamble the timing of the Law of the Sea Conference. I wish to remind the committee that the Conference meeting proposed for November or December of this year is only to be a brief organizational meeting. The substantive meeting is scheduled to occur in April/May 1974.

Although an expectation of completing the Conference in 1974 exists, the possibility of having to complete the work in 1975 is recognized in the present contingency plans. The critical ingredient for meeting this schedule is the preparatory work for the Conference by the Seabed Committee. The progress of this work will be more apparent at the end of the March sessions.

However, the possibility exists that the preparatory work under the present schedule will not be sufficiently completed. If this should be so, extra work sessions should be sought to attempt to fill the resulting gap so that the Conference dates will not again be deferred.

Mr. Chairman, I have perhaps spent too much of your and the committee's time on the preambular part of the "Law of the Sea Resolution." I promise to be brief in my remarks on the two sections of the resolution itself.

The objectives listed appear to me, to the extent that I have competence, to be those envisioned in the President's May 23, 1970, statement and I endorse them. I note that the freedoms of the seas should include overflight as well as those listed. As I commented earlier, these freedoms are under attack, even including freedom of scientific research.

With respect to the objective of "an effective International Seabed Authority to regulate orderly and just development of the mineral resources of the deep seabed as the common heritage of mankind, protecting the interests both of developing and of developed countries." I note the absence of the primary function of the proposed Seabed Authority to promote the development of the mineral resources of the deep seabed.

It is only by timely development and use that the concept of the common heritage of mankind takes on meaning.

As I am sure you know, some states think in terms of regulation to hold back the development of the seabed resources with a view of protecting land base producers. Some think in terms of the Authority itself being the sole developer of these resources.

United States policy has been to encourage development by states or judicial persons sponsored by states, and to make clear that an international operating agency is unacceptable. It is believed that encouragement of resource development is very much in our national interest and to the interest of the developing countries as well. This portion appears to me to be supported by this resolution with its reference to interests of developed countries.

I am not competent to comment on the paragraph on conservation and protection of living resources and therefore have no position on this aspect of the objectives.

Finally, I completely endorse the commendation of the U.S. Delegation to the Seabed Committee. The leadership of the delegation is excellent and the performance of its members is high.

There is in fact no need to encourage the delegation to continue to work diligently to seek early agreement. The delegation as a whole already embraces the ethic of sparing no effort to achieve U.S. objectives in a timely manner, and they will be heartened by the interest of your committee in their work.

This concludes my statement, and I thank you, Mr. Chairman. Mr. FRASER. Thank you very much, Mr. Dubs.

Our third witness is Mr. Lowell Wakefield. We are glad to have you here.

#### STATEMENT OF LOWELL WAKEFIELD, FORMER PRESIDENT, WAKEFIELD FISHERIES, ALASKA

Mr. WAKEFIELD. Thank you, Mr. Chairman, and members of the subcommittee. I join the others in thanking you for holding these hearings. I did intend to send the requisite 50 copies of my statement down with Mr. Moore a week ago, but somehow it did not manage to get here. I will have to trace them down when I get back to New York this evening.

I want to make it perfectly clear to start with that I am appearing here only representing myself and speaking only for myself. There has simply not been time to clear these remarks with any of the groups or organizations I normally represent, such as the University of Alaska, where I carry the title of distinguished associate in fisheries; the State of Alaska, which has, so far as I know, the only State commission on the law of the sea—and I am a member of that commission; the National Academy of Sciences, which I serve as a member of their Committee on International Marine Science Affairs Policy; and the more than \$1 billion a year corporation, Norton Simon, Inc., which through their Hunt-Wesson Division bought me out a couple of years ago and retired me, but retained me as a consultant.

All of which does not mean I am completely without bona fides. I live in the little fishing village of Port Lions, 25 miles west of Kodiak, Alaska. The slightly more than 200 inhabitants depend almost completely on salmon, crab, and halibut fishing for their livelihood.

I have spent a lifetime in the commercial fishing industry—as a herring fisherman, a sardine fisherman, plant bookkeeper and superintendent, trawler skipper, and corporate president. In the course of this, I am credited with starting the king crab industry in Alaska and throughout the other States.

But enough of ancient history. What we are here for today is basically to discuss House Resolution 216 and its companion resolution on the Senate side—I understand the current number is 82.

I sincerely hope that these resolutions, or something very similar, are reported favorably out of committee and pass both Houses of the Congress with overwhelming votes.

There are a number of valid reasons for such a position:

I sense a diminished concern, both within and without the Government, in law of the sea matters. This would be greatly offset by vigorous congressional action.

For the first time since I can remember, the fishing industry in the United States is unified behind a program; behind the species approach to fisheries management espoused by our Government all through the law of the sea negotiations, but particularly clarified by the speeches of Ambassador McKernan in New York a year ago and in Geneva last summer, and by the submission of United States draft fisheries articles to the preparatory committee for the Law of the Sea Conference in Geneva.

Unity amongst the various segments of the U.S. fishing industry is rare. The interests of a man fishing a 23-foot gillnetter for salmon in Alaska are ordinarily not those of the captain of a huge, modern, multimillion-dollar tuna seiner from San Diego cruising the waters off West Africa.

The interests of a small shrimp dragger in the Gulf of Maine are not usually those of a big American shrimp dragger off the rich northern coast of South America.

At the present time there are two principal approaches to world fisheries management: the zonal approach and the species approach.

The zonal approach is best known through the Latin American declarations of a 200-mile zone, their arrest of American tuna boats within that zone, et cetera. But this concept, in varying degrees, has also been adopted by many other countries, such as Iceland, Ghana, India, Pakistan, Senegal, Sri Lanka, South Korea, the Maldives, and, within the last few days in New York, by New Zealand and by Australia.

It has the great appeal of simplicity. "If over three-fourths of the fish off our coasts are harvested by Russian, Japanese, and Canadian fishermen, let's declare a 200-mile limit and kick them out," is a common theme of remarks heard in U.S. fishing communities.

The most significant flaw in the zonal approach is that many of our most important fisheries are not protected by a 200-mile zone. Two hundred miles would do nothing for Alaska's most lucrative fishery, salmon, for the salmon range thousands of miles in their salt water feeding migrations.

In fact, a 200-mile limit might do great harm to the Alaska salmon industry by giving the Japanese a perfect excuse for renouncing the International North Pacific Fisheries Treaty.

A 200-mile limit would make life almost impossible for our southern California tuna seiners. A U.S. declaration of a 200-mile limit would

wipe out, or at least seriously embarrass, U.S. shrimp fishermen off South America.

I regard the species approach to be extremely simple, certainly as simple as the zonal approach, and much more suited to U.S. needs. Stripped of complications, it means merely that fish should be managed according to their biology.

Those which remain in coastal waters during their life history would be managed by the coastal state, with two important provisos: Species which move up and down the coast would be managed by bilateral agreement with the other country off whose coast they spend part of their lives; species which are not utilized or are underutilized by the coastal state (such as the shrimp off South America) would be available for harvest by foreign vessels, without discrimination and with payment of reasonable fees.

Those species which spawn and are reared in fresh water (like our Alaska salmon) would appertain to the country which raised them, regardless of where they might be found during their feeding migrations.

Wide-ranging species like the tunas should be managed by an international organization.

I hope you favorably pass on House Resolution 216, I am available for any questions you might have.

Mr. FRASER. Thank you very much, Mr. Wakefield.

Our fourth and final witness is Mr. Ely. We are glad to have you. Go ahead, sir.

#### STATEMENT OF NORTHCUTT ELY, ESQ., LAW OFFICES OF NORTHCUTT ELY, WASHINGTON, D.C.

Mr. ELY. Mr. Chairman, I gather that it is fashionable for a witness first to very modestly disclaim representing anyone, and at the same time to leave a proper, if necessarily subtle, inference that he must know something or he would not have been invited here.

I am here by invitation. I am not here representing any client or organization. I have had a certain amount of contact with the problems I will speak about. I am chairman of the section on natural resources law of the American Bar Association and a member of the National Petroleum Council. I am chairman of the Committee on Law of the Sea of the American branch of the International Law Association.

In these and some other responsibilities I have had some contact with the problem of law of the seas as related to petroleum. In my prepared statement which will be in your record I endeavor to touch on seven points. I shall briefly summarize it.

The first of these is to put this discussion, so far as petroleum is concerned, in context with reference to the energy crisis. This expression has become somewhat common coinage, but it is real. As Mr. James Akin of the State Department has put it, "The wolf is here."

The energy crisis has come home to us in a number of ways. Schools had to be closed this last winter for lack of fuel oil. A gasoline shortage is predicted for this summer and there is some talk of rationing. Gasoline consumption per mile is higher because of the pollution control equipment.

The Federal Power Commission is refusing to permit the burning of natural gas in new boilers to generate electricity. The gas companies in the nearby areas of Washington and Virginia are refusing to connect with new homes.

Domestic oil production is operating at full capacity, and declining. Domestic refineries are running at capacity, when they can get crude oil. In many areas utilities, like other industries, are forbidden to burn fuels containing more than a fraction of 1 percent sulfur. They are denied the use of low-sulfur gas, and there is not enough low-sulfur domestic crude oil to meet the demand. Low-sulfur coal is not available everywhere, and there is a growing movement to restrict strip mining of this alternate source of energy.

The number of feet of drilling required to discover a barrel of new reserves is increasing steadily, as the search becomes more difficult. The cost of finding each new barrel is becoming higher.

The petroleum resources of Alaska are still denied to the American consumer by an environmental controversy. And at that, the North Slope was the first discovery of a potentially billion barrel field in over 30 years, whereas in the Persian Gulf area alone several multi-billion barrel discoveries are reported each year.

No adequate relief is in sight, from domestic sources, within the next decade. Oil shale can some day supply part of the deficiency. So can the conversion of coal to synthetic oil and gas. But both sources involve tremendous environmental questions, plus the solution of serious technical problems, plus high costs.

The same seems to be true of nuclear power, once thought to be the answer to curtailment of our supplies of oil and gas. There are no easy answers.

On the demand side of the equation, the National Petroleum Council, in a recent report, has estimated that the Nation's total demand for energy can be expected to increase as much as 92 percent by 1985. Domestic production of oil and gas cannot be expected to keep up with that pace.

We are dependent today on foreign sources for some 30 percent of our total oil supply. By 1985, it is anticipated that the United States will be importing over 50 percent of its oil requirements, of which 10 to 11 million barrels daily will be waterborne imports of crude and products. This approximates the total daily production of petroleum liquids in the United States in 1970.

Supplies of foreign oil have been interrupted a dozen times or more in the last decade, for example, by the closing of the Suez Canal and curtailments in Libya, and so on.

This dependence on foreign petroleum poses serious balance of payment problems. We must pay for imported petroleum in dollars. Even at present prices, which foreign governments are steadily pushing upward, payment for 10 million barrels daily would add over \$10 billion annually, in 1973 dollars, to our adverse balance of trade.

Most of it is accounted for by the exactions of foreign governments (taxes, bonuses, royalties, participation agreements) in return for their oil.

The dollar is in enough trouble now, in consequence of an adverse balance of trade of \$6.8 billion in 1972. No one has come forward with an answer to this problem.

It is essential, therefore, that we take a hard look at American seabed policy because this will have great impact on the adequacy and the cost of America's petroleum supply. About 20 percent of our supply now comes from offshore fields, here and abroad, and the percentage is expected to rise.

The impact of U.S. seabed policies on American petroleum supplies can be sorted out into several categories. These relate to:

The American continental margin, that is, the submerged portion of the American continent adjoining our land territories;

The continental margin adjacent to foreign countries;

The abyssal ocean floor, seaward of the continental margins.

All of these involve the real estate underlying the oceans. But there are three other important factors:

The use of the oceans for the transportation of petroleum from producing countries to consuming countries;

Protection of investments;

Compulsory settlement of disputes.

My prepared statement engages in some discussion of each of these and the relation of the pending resolution to them.

I may say at the outset that in my opinion current American policy, if I understand correctly Ambassador Stevenson's statement to the U.N. Seabed Committee on August 10, 1972, is on about the right course, just as the U.S. Draft Seabed Treaty of August 1970, 2 years ago, was on the wrong course by not quite 180°.

I consequently am glad to endorse House Resolution 216, with the exception of the compliment that it pays the Draft Seabed Treaty of August 1970, and its failure to deal at all with the extent of national jurisdiction. I would respectfully dissent from any endorsement of the 1970 draft treaty. I would also join with what Mr. Dubs said about the desirability of including reference to freedom of overflight.

Turning now to the American continental margin, this is of prime concern to the American Congress because the U.S. Geological Survey has estimated that the probable petroleum content of the American continental margin seaward of the 200 meter contour, out to 2,500 meter line, is of the order of 600 billion barrels of oil. The resource from the coast to the 200-meter line is of about the same magnitude. This number can be reduced to any degree you like, because not all that oil is recoverable. But no matter how much you shrink it, it can be compared with the estimate by the same source of the total recoverable petroleum originally in place in the United States. This is of the order of 100 billion barrels, only a fraction of the quantity at stake in the American continental margin seaward of the 200 meter line.

In my mind this, the last and greatest reserve of the American people ought to stay under the exclusive control of Congress and not be subjected to any degree of international ownership or control.

My primary discontent with the Seabed Treaty, which surfaced 2 years ago, was well expressed in the report of the U.S. Senate Committee on Interior and Insular Affairs which studied it, that it went in precisely the wrong direction in renouncing exclusive American jurisdiction over the American continental margin seaward of the 200-meter line, and in agreeing to accept a trusteeship, under the treaty, of rights derived solely from the treaty.

I disagreed with that treaty's proposal that one-half to two-thirds of the governmental revenue to this area be dedicated toward an international regime to be appropriated by an international group rather than the Congress of the United States.

The proposal by Mr. Stevenson of August 10, 1972, by contrast, is that the United States is prepared to accept the principle of substantially complete coastal state jurisdiction with respect to the continental margin if the coastal state will agree to honor certain internationally agreed standards relating to protection against pollution, protection of investment, settlement of disputes, and so on.

This is on the right course. There is a vast and decisive difference between agreeing to relinquish the title to your home and to get back from your neighbors a grant as a trustee of the diminished estate, on the one hand, and, on the other hand, keeping your title and accepting servitudes on it for the general good of your neighborhood, which is the current American position as I understand it to be.

If I am wrong in my favorable interpretation of Mr. Stevenson's statement, and if a relinquishment of the common heritage of the American people in the continental margin is still contemplated then I would have to raise my voice against that.

Turning to the foreign continental margins, we of course have to recognize in others precisely the rights we claim for ourselves. That is to say, under the existing Continental Shelf Convention and the conventional law as stated by the International Court of Justice in the North Sea Continental Shelf cases, the coastal state now has exclusive sovereign rights with respect to exploration and exploitation of natural resources of the seabed which constitutes the prolongation of its land territories.

This doctrine, in my view is without limit as to distance from shore or depth of water, but it is limited and circumscribed by the fact that the coastal state's jurisdiction with respect to seabed resources does not extend to mid-Pacific or mid-Atlantic, but is coterminous with the prolongation of its land territories. The continental land masses are bounded by the junction between the rocks of the continent and the rocks of the abyssal ocean floor. The exposed submarine face of the continents, the continental slope, has been called the world's most prominent topographical feature. The submerged segments of the continents, being the participation of their land territories, are within the exclusive jurisdiction of the coastal states occupying those land territories under existing law. But their seabed jurisdiction stops where the continents stop.

This sealed jurisdiction is limited; it has nothing to do with jurisdiction over superadjacent waters or air space. Article 3 of the Convention reassures us that the water and air above are totally unaffected by the jurisdiction with respect to resource developers which is recognized in the underlying real estate.

As to foreign continental margins it is important, that from the viewpoint of the American consumer, that we do not again make the mistake proposed in the 1970 Seabed Treaty of being the law-giver, to hand to the countries of the world a universal mining code that they should enact. No matter how perfectly it might be drawn, it is precisely on the wrong course for the American consumer to create a worldwide OPEC, an international governmental cartels, administrative a monolithic law.

There is some degree of competition existing among these foreign nations for our capital; let's keep it that way. Let's not deal with a 120-nation OPEC to enforce a single mining law, particularly one we have drafted for them. This was a totally mistaken policy.

With respect to the abyssal ocean floor: By hypothesis the area seaward of the continental margins is beyond the limits of national jurisdiction. We thus have quite a different problem, and a very puzzling one.

There are two schools of thought about it.

One is that under existing law this area is subject to appropriation by anyone, who owes responsibility only to the flag of the vessel from which he operates or to the flag of his own state of which he is a national.

There is an opposing view that the abyssal ocean floor is in some way the common heritage of mankind and that license to operate there can only be derived at some future time from an international organization expressing the will of the community of nations.

Whatever one might think about what the law has been or should be, the fact is that the United Nations is developing a consensus in favor of the second concept.

I have two thoughts I would like to express about this. One, I share the view that has been expressed at this table, of concern about vesting operating authority in any international regime. That ought to be strictly a licensing authority.

Second, I am concerned that this creature, whatever it may be, shall not climb up on the continental margins too close to the coast. Let it stay a creature of the deep ocean and function beyond the limits of the coastal state's jurisdiction, that is, seaward of the continental margin. I don't want that regime telling the American Congress or consumer what the conditions of operation shall be on any part of the American continental margin, down to the depths.

As to the administrative device proposed by the United States in the Draft Seabed Treaty, in my view it is too complicated, but that is not a matter within my particular field of discussion here today.

It consists of a council of 24 nations: an assembly of 100 or more, composed of all the parties to the treaty: a tribunal; 5 commissions, and a secretariat. For a long time to come, not much business will walk through the doors of this huge new bureaucracy. Nobody is going to be looking soon for petroleum out in the depths of the abyssal ocean.

I rather have a sense of concern for the American consumer of nickel, copper, cobalt—nickel particularly—who may be deprived of the opportunity to get materials of this sort by a long, drawn-out wrangle over the structure of this huge new international edifice which I referred to as "a floating Chinese pagoda, the S.S. *Parkinson*."

I would rather see a simple scheme whereby, somewhere, companies like Mr. Dubs' can get to work.

I sympathize with statements like those made by Professor Moore or Mr. Retina, "Don't rock the boat" by premature legislation. Let the Seabed Committee have a chance. I agree with what Dean Rusk has said, you may have to put a time limit on this and get on with it.

The President made the point that he was not in favor of halting seabed development. Our country is against a moratorium. The treaty, if one is ever agreed on, may be one that is dictated by a group of nations who are in a large majority in the United Nations. If they in-

sist on a treaty we can't accept, then what happens to international law?

We are a party of the International Sea Conventions. Are we going to have two rules of international law, one the new edition and one the older edition?

We may face a protracted period of uncertainty with respect to areas seaward of the continental margins, which is unfortunate. I think the Congress will have to deal with this on an interim basis within the next year or two.

I don't want to take your time further by a discussion of the matter of protection of investments and compulsory settlement of disputes, important as they are. I should say they are really two separate problems. We do want American investments in the deep seabed protected adequately. This means there must be a technique set up for resolution of disputes between the Government and the operator.

My prepared statement which follows and the reports of the Committee on Deep Sea Mineral Resources of the American Branch of the International Law Association, July 1968, July 1960, and July 1972 which I have asked to be placed in the appendix make some efforts to explore that problem.

Thank you very much.

[The prepared statement of Northcutt Ely, Esq., follows:]

PREPARED STATEMENT OF NORTHCUTT ELY, ESQ., LAW OFFICES OF NORTHCUTT ELY, WASHINGTON, D.C.

The committee has before it a resolution, H. Res. 216, which endorses a number of policy positions which representatives of this Government have taken from time to time in the Law of the Sea discussions in the United Nations. I have been invited to speak about these, with particular reference to petroleum. I am honored by the invitation, but I respond only as an individual, not in any representative capacity on behalf of a client.

Not all of the U.S. policy statements referred to in H. Res. 216 are consistent with one another. It is time for a reappraisal of American Law of the Sea policy, with respect to our energy supplies, and the hearings on H. Res. 216 appear to recognize this.

#### 1. THE "ENERGY CRISIS"

Recent events have made American consumers sharply aware of the energy crisis, as informed people in government and industry have been for some time. As Mr. James Akin of the State Department has put it, "The wolf is here." Examples are familiar. Fuel oil shortages caused the closing of schools and stores in some parts of the country this winter. A gasoline shortage is predicted this summer, and there is talk of rationing. New cars require more gasoline per mile, because of pollution control equipment. The Federal Power Commission is refusing to approve the burning of natural gas in boilers in new installations.

The gas companies, for example, in the northern Virginia suburbs of Washington, are refusing to connect with new houses. Domestic oil production is operating at full capacity, and declining. Domestic refineries are running at capacity, when they can get crude oil. In many areas utilities, like other industries, are forbidden to burn fuels containing more than a fraction of 1 percent sulfur. They are denied the use of low-sulfur gas, and there is not enough low sulfur domestic crude oil to meet the demand. Low sulfur coal is not available everywhere, and there is a growing movement to restrict strip mining of this alternate source of energy. The number of feet of drilling required to discover a barrel of new reserves is increasing steadily, as the search becomes more difficult. The petroleum resources of Alaska are still denied to the American consumer by an environmental controversy. And, at that, the North Slope was the first discovery of a potentially billion barrel field in over 30 years, whereas in the Persian Gulf area alone several multibillion barrel discoveries are reported each year. No adequate relief is in sight, from domestic sources, within the next decade. Oil shale can some day supply part of the deficiency. So can the conversion

of coal to synthetic oil and gas. But both sources involve tremendous environmental question, plus the solution of serious technical problems, plus high costs. The same seems to be true of nuclear power, once thought to be the answer to curtailment of our supplies of oil and gas. There are no easy answers.

On the demand side of the equation, the National Petroleum Council, in a recent report,<sup>1</sup> has estimated that the Nation's total demand for energy can be expected to increase as much as 92 percent by 1985. Domestic production of oil and gas cannot be expected to keep up with that pace. We are dependent today on foreign sources for some 30 percent of our total oil supply. By 1985, it is anticipated that the United States will be importing over 50 percent of its oil requirements, of which 10 to 11 million barrels daily will be water-borne imports of crude and products. This approximates the total daily production of petroleum liquids in the United States in 1970. Supplies of foreign oil have been interrupted a dozen times or more in the last decade, e.g., by the closing of the Suez Canal and curtailments in Libya, and so on.

This dependence on foreign petroleum poses serious balance of payment problems. We must pay for imported petroleum in dollars. Even at present prices, which foreign governments are steadily pushing upward, payment for 10 million barrels daily would add over \$10 billion annually, in 1973 dollars, to our adverse balance of trade. Most of it is accounted for by the exactions of foreign governments (taxes, bonuses, royalties, participation agreements) in return for their oil. The dollar is in enough trouble now, in consequence of an adverse balance of trade \$6.8 billion in 1972. No one has come forward with an answer to this problem.

## 2. ELEMENTS OF THE POLICY PROBLEM

It is essential, therefore, that we take a hard look at American seabed policy, because this will have great impact on the adequacy and the cost of America's petroleum supply. About 20 percent of our supply now comes from offshore fields, here and abroad, and the percentage is expected to rise.

The impact of U.S. seabed policies on American petroleum supplies can be sorted out into several categories. These relate to:

- The American continental margin, that is, the submerged portion of the American continent adjoining our land territories;

- The continental margin adjacent to foreign countries;

- The abyssal ocean floor, seaward of the continental margins.

All of these involve the real estate underlying the oceans. But there are three other important factors:

- The use of the oceans for the transportation of petroleum from producing countries to consuming countries;

- Protection of investments;

- Compulsory settlement of disputes.

I will state, as briefly as possible, my views as to what American policy should be on each of these, and the relation of the pending resolution to them.

I may say at the outset that in my opinion current American policy, if I understand correctly Ambassador John Stevenson's statement to the U.N. Seabed Committee August 10, 1972, is on about the right course, just as the U.S. Draft Seabed Treaty of August 3, 1970, was on the wrong course by not quite 180 degrees.

## 3. THE AMERICAN CONTINENTAL MARGIN

The American continental margin now provides about one-fifth of all oil and gas used in the United States. This ratio is expected to rise to 30 percent by 1980. The Federal Treasury has received over \$6 billion in bonuses and royalties from offshore oil and gas (exclusive of income tax)—some six times as much as from all onshore oil and gas. Yet less than 1 percent of the area of the American continental margin has been tested by the drill. Offshore reserves in place, from the edge of the territorial sea out to the 200-meter isobath, are estimated by the U.S.G.S. to amount to 60-billion barrels of oil, and 1,640 to 2,220 trillion cubic feet of gas, and to be of about the same magnitude between the 200-meter and 2,500-meter isobaths. Not all of this is recoverable, but, no matter how drastically the figures are reduced, they can stand comparison with onshore resources of about 100 billion barrels, a figure which includes all the oil heretofore recovered, plus all of the known reserves not yet produced.

<sup>1</sup> U.S. Energy Outlook, a Summary Report of the National Petroleum Council (Dec. 1972).

Our Nation will be increasingly dependent on production from the greater depths which the industry is acquiring the capability to enter. The National Petroleum Council estimated in 1969 that within less than 5 years technology will allow drilling and exploitation in water depths up to 1,500 feet (457 meters). Within 10 years technical capability to drill and produce in water depths of 4,000-6,000 feet (1,219-1,829 meters) will probably be attained. Events have confirmed the reasonableness of this estimate. In 1973 a well capable of commercial production, if found, was drilled in water some 2,500 feet deep. It is conservative to say that the American continental margin represents the last and greatest mineral reserve under the control of Congress, and that its value can be estimated only in terms of hundreds of billions of dollars.

The resolution before the committee commends both the draft treaty which was submitted by the U.S. delegation to the U.N. Seabed Committee August 3, 1970, and the policy statement which was presented by our Ambassador Stevenson to the same committee 2-years later, August 10, 1972. The two are in conflict, with respect to the continental margin.

The draft treaty declared the whole seabed, including the continental margin, seaward of the 200-meter isobath, to be an international seabed area, the common heritage of all mankind, and proposed that coastal states, including the United States, should have no greater rights in the continental margin seaward of the 200-meter line than any other state, except to the extent that the treaty delegated such authority. The area between the 200-meter line and the edge of the continental margin was to be a trusteeship zone, in which the coastal state would control exploration and the exploitation as trustee for an international seabed resource authority, in the exercise of delegated powers, not in the exercise of inherent sovereign powers. Sovereign rights in this area would be relinquished. The treaty would dedicate one-half to two-thirds of all governmental revenue from the trusteeship area to funds to be administered by an international authority. Operations would be conducted in accordance with a world-wide mineral law annexed to the treaty, differing radically from the Outer Continental Shelf Lands Act.

I opposed this treaty as did many others, for the reasons eloquently stated by a special committee of the Committee on Interior and Insular Affairs of the U.S. Senate in 1970:

"Whatever renunciation might be intended to be made through the adoption of a future seabed treaty, no renunciation should be permitted to be made which in any way encroaches upon the heart of our sovereign rights under the 1958 Geneva convention. We construe the heart of our sovereign rights under the 1958 Geneva convention to consist of the following:

"(1) The exclusive ownership of the mineral estate and sedentary species of the entire continental margin;

"(2) The exclusive right to control access for exploration and exploitation of the entire continental margin; and

"(3) The exclusive jurisdiction to fully regulate and control the exploration and exploitation of the natural resources of the entire continental margin.

\* \* \* \* \*

"Our only areas of initial difference with the President are his suggestions that the United States should renounce its sovereign rights to its continental margin in return for similar, but limited rights in an area designated as a trusteeship zone, and his suggestion that leases applying to areas of the continental shelf beyond the 200-meter isobath be issued subject to an international regime to be agreed upon.

"Regarding the proposal suggesting renunciation of the heart of our sovereign rights, we have three objections:

"(1) The offer to renounce our sovereign rights beyond the 200-meter isobath could cast a cloud on our present title to the resources of our continental margin;

"(2) The renunciation of our sovereign rights to the resources of our continental margin beyond the 200-meter isobath in no way guarantees the willingness of the international community to redelegate functionally to us the same rights we would renounce, and

"(3) Our sovereign right to explore and exploit our continental margin, although reaffirmed by the 1958 Geneva Shelf Convention, are nevertheless inherent rights which have vested by virtue of the natural extension beneath the sea of our sovereign land territory. Our sovereign rights to the resources of this area are not dependent upon the acquiescence and approval of the international com-

munity. To renounce these inherent rights and to ask that they be returned in part to us merely requests the international community to give us that which, ipso facto and ab initio, is rightfully ours to begin with."

I am surprised to note the commendation of the 1970 draft treaty in the resolution now before you. I must dissent. I thought it had been abandoned and replaced by the opposite policy announced in Ambassador Stevenson's statement of August 10, 1972, as to the continental margin. He said:

*"Coastal resources generally"*

"Mr. Chairman, in order to achieve agreement, we are prepared to agree to broad coastal state economic jurisdiction in adjacent waters and seabed areas beyond the territorial sea as part of an overall law of the sea settlement. However, the jurisdiction of the coastal state to manage the resources in these areas must be tempered by international standards which will offer reasonable prospects that the interests of other states and the international community will be protected. It is essential that coastal state jurisdiction over fisheries and over the mineral resources of the continental margins be subject to international standards and compulsory settlement of disputes.

*"Seabed resources—Coastal areas"*

"We can accept virtually complete coastal state resource management jurisdiction over resources in adjacent seabed areas if this jurisdiction is subject to international treaty limitations in five respects:"

These were:

(1) International treaty standards to prevent unreasonable interference with other uses of the ocean;

(2) International treaty standards to protect the ocean from pollution;

(3) International treaty standards to protect the integrity of investment;

(4) Sharing of revenues for international community purposes;

(5) Compulsory settlement of disputes.

They were restatements of the five substantive points made in the President's statement of May 1970, minus his rhetorical reference to "relinquishment," which the 1970 draft treaty seized upon and enshrined.

There is a great and decisive difference between the idea of relinquishing title to your house and getting back a diminished estate, which was the concept of the draft treaty of 1970, and the concept of keeping your title but accepting servitudes thereon for the good of your neighbors, which, as I understand it, is the present American policy as announced by Mr. Stevenson.

There was not much support for the old scheme, overseas or at home. The new one, which endorses "virtually complete coastal state resource management jurisdiction" as part of an overall law of the sea settlement, deserves support. Mr. Stevenson's five conditions agree with our domestic law, with respect to pollution, protection of investments, and determination of disputes. These are already of a high order. It is no longer proposed that any state, our own included, scrap its offshore minerals law and enact the one proposed by the treaty draftsmen. As to Mr. Stevenson's renewed suggestion of revenue sharing, the idea seems to be attracting little international support, and should be quietly dropped. The draft treaty proposed to donate one-half to two-thirds of governmental revenue from the continental margin seaward of the 200-meter line to an international fund. Congress probably would not, and it certainly should not, donate billions of dollars for appropriation by an international legislature, as was there proposed.

#### 4. WITH RESPECT TO THE CONTINENTAL MARGINS OF FOREIGN NATIONS

We must, of course, recognize the same geographical extent and character of the rights in other coastal states with respect to their continental margins as those which we assert for the United States.

In my opinion, this is in the interest of the American consumer, as contrasted with the lodging of control of these resources in a single international organization. The Organization of Petroleum Exporting Countries (OPEC) is an example of such a monolith, enforcing uniform bargaining conditions and ever-escalating prices. The ill-starred U.S. treaty proposal of 1970 posed a dual danger to American consumers with respect to petroleum from foreign continental margins. First, it would have made the International Seabed Resource Authority the overlord, the coastal States its trustees exercising delegated powers on the continental margins, requiring the coastal State to collect for the Authority as much

or more money than it collected for itself from the producer; second, it proposed a uniform offshore mining law, thus uniting all the coastal states so as to confront the consuming nations with a super-OPEC. American policy should be to encourage competition, not to foster cartels, either of producing countries or of producing companies. There is now some degree of competition for foreign capital among producing countries, and let us do nothing to suppress it, as this treaty would have done.

Ambassador Stevenson's offer to "accept virtually complete coastal resource management jurisdiction" was conditioned, among other things, on acceptance of internationally agreed standards of pollution prevention, security of investments, and compulsory settlement of disputes. These should be insisted on. These were all in the President's statement of May 1970. We come to them in more detail later. The qualifying expression "internationally agreed," is important.

On the jurisdictional question, it is necessary to take note of the special problem posed by the "marginal seas," the very large semienclosed seas along and on the continental margins. In all, the geographers count some 40 marginal or semienclosed seas around the world. They are particularly important from the standpoint of mineral resources, because they are estimated to contain some 6 percent of the sediments of all the seabeds of the world, while occupying only 1 percent of the whole seabed area. The list includes the Black Sea, the Baltic, the North Sea, the Red Sea, the Persian Gulf, the Caribbean, the Gulf of Mexico, the Mediterranean, and the whole chain of marginal seas along the coast of Asia: the Bering Sea, the Sea of Okhotsk, the Sea of Japan, the Yellow Sea, the East China Sea, the South China Sea, the Philippine Sea, the Java Sea, and so on.

Some, like the North Sea (over 400 miles wide in places) and the Persian Gulf (some 800 miles long, are but relatively shallow, and coastal states' jurisdiction seems secure. Some, like the Black Sea and the Baltic are so wholly enclosed as to make somewhat academic the question of whether the coastal states or some international authority is to exercise jurisdiction over their seabeds. The Caribbean and the Gulf of Mexico may well be in this same class.

The very large Asian marginal seas present a fascinating and troublesome jurisdictional problem. They, like the Caribbean, are enclosed by island arcs. Their central areas are sometimes very deep; for example, the Okinawa Trough in the East China Sea, the Palawan Trough in the South China Sea. But seaward of the island arcs are much deeper trenches, such as the Ryukyu Trench and the Mariana Trench. The trend of modern scientific opinion seems to be that these ocean trenches, not the shallower troughs lying landward of the island arcs, mark the boundaries between the oceanic plates and the plates which "float" the continents. Thus, in a global sense, the deep trenches seaward of the Asian island arcs mark the seaward boundaries of the Asian continent. The island arcs, on this hypothesis, are elements of the continental system. The seabeds of the marginal seas that they enclose are not identified geomorphically with the abyssal ocean floor from which the island arcs separate them. Instead, they are to be deemed to be prolongations of the land territories of the mainland and the islands, in a geomorphic sense.

If so, even such wide and deep seabeds as those of the South China Sea and the East China Sea are subject to the exclusive seabed jurisdiction of the adjacent states. The Soviet Union has made such an assertion with respect to the Baltic, and as recently as March 23, 1973, the People's Republic of China made similar claims as to the East China Sea and Yellow Sea, to the exclusion of Korea. Disputes over the demarcation of seabed boundaries in this area of common interest are to be expected, but that is a completely different problem from the question of whether the enclosing states, collectively, have jurisdiction to the exclusion of the jurisdiction of all other states and that of any new international authority.

There is plenty of room for differences of opinion on this subject, but the ouster of the enclosing states from exclusive collective jurisdiction over the seabed of a semienclosed sea seems a most unpromising exercise. The legal rationale of the *North Sea Continental Shelf* cases, and the political rationale of the Truman proclamation, support the recognition of the special interest and jurisdictional competence of the states whose territories encompass a marginal sea and set it off from the open ocean. The land territories of the island arcs, and the semi-enclosed seabed lying between them and the continent, being elements of the continental margin in a geomorphic sense, corded similar recognition in a legal sense. But this does not mean that the jurisdiction of either the continental or the

island states which front (for example) on the Pacific extends to the median line of that ocean. On the hypothesis which we have explored, and which to me seems persuasive, their seabed jurisdiction extends to, and is limited by, the seaward boundary of the continental margin adjacent to their land territories, and this boundary is the quite definite one between the rocks of the abyssal ocean floor and those of the continental land mass, evidenced by the deep trenches seaward of the marginal island arcs.

#### 5. THE ABYSSAL OCEAN FLOOR

By hypothesis, the seabed seaward of the continental margins is beyond the limits of national jurisdiction, and we are thus approaching a new problem.

On one view, the seabed seaward of national jurisdiction may be explored and its minerals produced by anyone, and his only responsibility runs to the flag nation of the vessel from which his operation is conducted, or to the state of which he is a national, or both. This view of international law treats the seabed as the property of no one, like an undiscovered island in midocean in past centuries.

On the opposite view, the seabed seaward of national jurisdiction is the common heritage of mankind, and no one may appropriate any part of it exclusively without the permission of the community of nations, to be expressed at some future time through some international agency not yet created.

Whatever one's opinion may be as to the past state of the law on this subject, the current movement of opinion in the United Nations is all in the latter direction, and is so widely supported as to make it necessary to assume that this will be the premise of the instant international law which may be expected to spring from the current seabed negotiations.

There has been a feeling in the petroleum industry that its interest in the very deep seabed is so remote in time compared with its interests in the continental margin that the powers and structure of an international regime are of slight interest to it. I suggest that this may not be a realistic attitude, for the reason that the petroleum industry may have a very early interest in some of the gray areas that I identified earlier; namely, the very wide and very deep marginal seas, particularly along the coast of Asia. While, in my view, the enclosing coastal states do have exclusive jurisdiction to explore and exploit the seabeds of these marginal seas, it is by no means certain that the seabed treaty, when and if it finally evolves, will adopt this view. In any event, for a long period of time there may be uncertainty as to the jurisdiction of the coastal states around the larger marginal seas, and it may ultimately be resolved against them, either politically or judicially, and in favor of the international regime. Consequently, the petroleum industry does have a present stake in the form and power of the international regime, because a decision may be made in the United Nations proceedings in the relatively near future.

I endorse what Ambassador Stevenson has said about the opposition of the United States to vesting operating authority in an international regime. I think we have gone too far already in encouraging creation of an overly elaborate piece of international machinery. I have referred to the scheme proposed in the draft U.S. treaty as a floating Chinese pagoda, the *S.S. Parkinson*.

The Committee on Deep Sea Mineral Resources of the American Branch of the International Law Association, in 1970, made a thoughtful and detailed report on the problem of the deep seabed regime and I will file it with the committee. The committee's 1972 report said:

"With respect to an international regime for the seabed and subsoil beyond the limits of national jurisdiction, we reaffirm the views of our 1970 report favoring a claims registration system, an international supervisory authority with adequate but clearly defined powers, and appropriate arrangements for the expeditious settlement of disputes. We also reaffirm our views on the need to assure security of investments, and on the many subsidiary problems considered in that report. We recognize, however, that on many aspects of the regime there is room for negotiation. For this reason we could support in general, for example, the pattern of regime for this area, beyond the limits of national jurisdictions, proposed in the U.S. working paper of 1970 or the United Kingdom proposals of the same year, even though in our view the organizational arrangements in the U.S. paper are unnecessarily complicated.

"On the other hand, we are strongly opposed to the creation of an international regime which would place in the hands of a single agency exclusive operating rights, control over production and distribution, allocation of profits,

authority over scientific research, or any combination of these powers. Not only is such a monopoly unacceptable in principle, but it would be wholly unworkable in practice. Even if investment capital were available, the conditions for its employment would be such as to halt all progress for the foreseeable future in the development of the resources of the ocean floor. This would be particularly injurious, we would note, to the economic development plans of the developing states.

"It may seem that a design so obviously counterproductive need not be a matter for alarm. We are concerned, however, lest it might come about as a consequence of negotiations to reach desired solutions on other issues in the law of the sea. We believe that a viable regime for deep sea resources must be founded on technological and economic realities, not on unrelated political bargains or abstract dogmas. Resources in the deep sea, like natural resources everywhere, are of no benefit to anyone until they are recovered for use by consumers. If the goal is to make such resources widely available for the common advantage, the applicable regime must encourage the necessary development. If the 1973 conference is to have any success in this field, it must deal honestly and fairly with these realities."

#### 6. USE OF THE OCEANS FOR THE TRANSPORTATION OF PETROLEUM FROM PRODUCING COUNTRIES TO CONSUMING COUNTRIES

All States, consuming as well as producing nations, have an essential interest in unimpeded navigation on the world's oceans. Petroleum tankers at present represent nearly half of the total trade tonnage of the world.

The United States, by 1985, may be importing more than half of its oil requirements, of which 10 to 11 million barrels daily will be waterborne imports of crude and products. According to the National Petroleum Council's 1972 energy outlook report, if the total waterborne oil requirements from 1971 to 1985 were to originate in the Persian Gulf, a fleet of at least 400 tankers of 250,000 deadweight tons each would be required. We do not have the deep ports required to receive them. To build ports requires resolution of environmental concerns. The Council also projected the importation of about 4 trillion cubic feet of liquefied natural gas annually by 1985. This would require the construction of another 90 vessels, each having a maximum capacity equivalent to approximately 1 million barrels.

The cost of transporting petroleum from producing to consuming countries is seriously affected by the ability of large tankers to use straits and other essential channels, such as the Straits of Malacca, Singapore, Hormuz, Dover, Lombok, Luzon, Skagerrak, Florida, Oman, Mozambique, Gibraltar, and, when the Suez Canal is opened, Bab el Mandeb.

The extent to which existing international law is adequate to insure such passage has become increasingly subject to challenge. This challenge is related in part to the legitimate concern of coastal states about potential pollution. It is related also to nationalistic ambitions of a different sort. It is important that a fair balance be reached between the needs of coastal states and the requirements of international navigation, upon which the energy consumers of the world are increasingly dependent.

A main objective of this country in the current Law of the Sea conferences should be to obtain international agreement on the principle that the merchant vessels of all nations enjoy a right of unimpeded navigation on the world's oceans, subject to internationally agreed uniform standards relating to safety, including ship design and construction, and prevention of pollution. I stress internationally agreed standards as contrasted with subjective and differing standards of various states. We must recognize, indeed assert, the particular concern of coastal states in the safe conduct of maritime commerce in the waters adjacent to their coasts. The exercise of the right of navigation must also, of necessity, be in harmony with other lawful uses of the ocean.

Quite possibly there must come about some degree of departure from the traditional expression of innocent passage insofar as commercial navigation is concerned. This commercial problem is related to, but quite independent of, the military question of the right of free transit of straits and free overflight thereof, being related to considerations of national security.

Ambassador Stevenson called the American position on free transit of straits "essential," which I take it to mean "not-negotiable." I support that position, even though the commercial problem as to straits does not involve submerged transit or overflight, as the military problem does.

As to straits, in my view there now exists an international easement of necessity, in the nature of a right of unimpeded passage, which entitles all the nations of the world to the right of unimpeded commercial navigation through straits connecting the high seas, provided that vessels in transit through such straits are in compliance with internationally agreed safety and pollution standards. I do not think we are dependent on an agreement with the state or states whose territorial seas, if expanded to 12 miles, would overlap the whole width of a strait which has been used for centuries by the world's commerce, so long as the traffic through such a strait does not threaten the health and safety of the coastal state. If the traffic is in conformity with internationally agreed standards in those respects, the right of transit should be automatic. This international easement respecting straits is not affected by the decision of the coastal state to expand the width of its territorial sea from 3 to 12 miles.

I must admit that I have never understood the necessity for attempting to marshal the nations of the world on our side for a confrontation with the straits nations, in a demand for a convention on this subject which national pride requires them to oppose. I would prefer to assert customary law, and rely on quiet bilateral conversations.

The necessary right of unimpeded commercial navigation involves not only the imperative problem of straits, but, of nearly comparable importance, the right of unimpeded navigation of the sea which overlies those portions of the seabed in which the interests of coastal states are particularly recognized, subject in all cases to conformity of ocean traffic with internationally agreed standards.

It seems reasonable that coastal states should be authorized by any new convention to enforce internationally agreed safety standards—I underscore the words "internationally agreed"—including ship design and construction, and pollution control standards, in an agreed breadth of the waters adjacent to their coasts but seaward of the territorial sea. In other words, this might be termed a pollution control zone. Its width has no logical relation to the width of the economic resource zone, or the geographical extent of the coastal state's jurisdiction with respect to seabed resources.

If the coastal state is recognized as having some jurisdiction to enforce compliance with safety and pollution control standards in a belt of waters wider than its territorial sea, then the interests of all states in freedom of navigation require that in the event of seizure of a vessel by the coastal state, in such an expanded belt, prompt procedures be provided so as to enable immediate release of the vessel upon the giving of adequate guarantees, financial and otherwise, to comply with a properly adjudicated order enforcing those internationally agreed standards. The new Law of the Sea Convention could provide for this as well as for rights of review by an international tribunal of such seizure orders.

#### 7. PROTECTION OF INVESTMENTS AND COMPULSORY SETTLEMENT OF DISPUTES

The President, in his statement of May 1970, noted these two objectives of American policy and Mr. Stevenson, in his statement of August 10, 1972, called them "essential." The two are related but not identical.

Disputes likely to require international adjudication, absent settlement by negotiation or conciliation, can be visualized as those relating to operation of vessels, pollution, protection of investments, deep sea mining, and claimed interference with other international rights. In some cases the dispute may be between two or more governments, or it may be between a government and an international authority. In other cases, the parties concerned on one side of a dispute may be private parties and, on the other side, a government, either as licensor of a minerals operation, or in the enforcement of restrictions on navigation.

While compulsory procedures may be difficult to negotiate in a Law of the Sea Conference, the alternative, which would seem to be the recognition of special coastal state rights in broad areas beyond the territorial sea without provision for settling disputes arising from the exercise of such extra-territorial rights, would conflict with the interest of all countries in the unimpeded movement of vessels through the oceans, pollution control and the harmonization of uses of the ocean, as well as the interests of producers and consumers in the protection of the investments in deep sea mineral operations.

The problem of adjudication of seabed disputes between a state and its licensees seems no different in principle from adjudication of a similar dispute with respect to areas on land, or on the continental shelf landward of the 200-meter line, and

there is no uniformity at all in the statutory and contractual provisions presently applicable to such disputes. For this reason, this type of dispute may be the most difficult to subject to uniform adjudication machinery in a convention.

The specification of tribunals, and definition of their powers, must take the foregoing factors into account. For example, there may be differences between the acceptability of an international tribunal in a case involving navigation, as compared to a case involving a dispute between a state and its licensee. Whatever the adjudicatory entity may be, it should have power to order interim measures, such as posting of bond for release of a vessel, where necessary to prevent interference with the movements of vessels and their cargoes. Similarly, interlocutory orders may be necessary to prevent imminent harm to the marine environment.

Mr. FRASER. Thank you very much.

Perhaps I can begin with a question to you, Mr. Ely. Do your views as you expressed them here represent the views of the National Petroleum Council?

Mr. ELY. I tried at the very beginning, Mr. Chairman, to make clear that I don't come here carrying anybody's brief. It would be presumptuous to attempt to speak for the petroleum industries or the National Petroleum Council. I do not.

The council is the author of two fine reports on the law of the sea as affecting the petroleum resources of the world. It has submitted a third report on energy problems. It is in the process of writing a fourth one on some of the problems involving ocean navigation.

These reports speak for themselves. I would not attempt to speak for the National Petroleum Council.

Mr. FRASER. Do you believe, Mr. Secretary, that the resolution we have under consideration may be too specific in its endorsement of treaty objectives at a time when the negotiations are still in progress and the outcome is still uncertain? Based on your experience as Secretary of State, do you believe this can cause problems for the executive branch?

Mr. RUSK. It seems to me that it is appropriate for the Congress to set forth certain objectives which will give our negotiators greater strength in negotiation. In all candor, I would have to say that I would hope that the Congress would be in a position both organizationally and legislatively to look at these matters at a later stage of the negotiations in terms of what is possible from an international point of view.

We cannot establish international law unilaterally. I can anticipate that along the way certain tough decisions are going to have to be made in light of the negotiating situation.

At this stage I would think that this kind of resolution is appropriate as a statement of objectives and would strengthen the hand of our negotiators.

Mr. FRASER. Mr. Dubs, your interest, or that of your company I assume, is in the hard mineral resources—is that the right term?—as distinguished from oil.

Mr. DUBS. That is a proper term and that is correct.

Mr. FRASER. Are these resources found primarily in the deep sea area or in the Continental Shelf?

Mr. DUBS. They are in the deep sea and far from any definition of national jurisdiction that anyone has used in recent years. There are some hard mineral resources on the Continental Shelf, but they tend to be close to shore, with the most important undoubtedly being sand and gravel.

Mr. FRASER. With respect to the nodules—the small cluster of minerals found in deep seabed—is the exploitation of these likely to be, as far as the market in the world is concerned in the near future, manganese nodules?

Mr. DUBS. You ask a good question because we have to define manganese nodules. I suspect the most likely markets that manganese nodules will serve will be the nickel market. It will also make contributions to copper and cobalt and to some small extent, manganese. The primary metal value is nickel and copper.

The situation is that the United States, of course, is without appreciable domestic supplies of nickel. Over the years we have also been a net importer of copper. We have no commercial domestic manganese or cobalt. From the standpoint of the national interest it would appear that these metals will find their way into the national economy.

How many of them will find their way will relate to the state of development and the economics of production of these materials. With respect to economics, people who have worked in this field predict that extracting of these metals will be quite attractive compared to land base supplies, particularly for nickel.

However, ocean exploitation cannot go ahead at price levels that are below present real price levels. The expectation is that these ocean materials will take part of the load of the growth in use of metals and minerals so that they will share in the growth of these minerals rather than completely change the metal market.

In that respect I would guess that in the next decade there could be three or four plants which would produce nickel from the ocean. This might amount to perhaps 10 to 15 percent of the market for nickel worldwide.

The timing of this, of course, depends not only on technology and normal business considerations, but it also depends to some extent upon resolution of the Law of the Sea problem. Assuming that the Law of the Sea problem itself is not a barrier, one can predict that production can occur as early as 1976. It certainly seems apparent that it will occur by 1978. The most pessimistic estimates are 1980.

I would like to add, if I may, that people working in the field are spending large amounts of money on that research, but the present uncertainty with respect to the Law of the Sea is an inhibiting influence.

Mr. FRASER. Mr. Wakefield, so far as you know, are all the various fishing interests we have in the United States agreeable to the approach of the U.S. Government with respect to the management of fish resources?

Mr. WAKEFIELD. That is not an easy question to answer either, Mr. Chairman, as you know. Basically, yes, there are four principal divisions in the U.S. fishing industry. About 80 percent of our fish are the so-called coastal species that we harvest on our own Continental Shelf. About 9 or 10 percent of our fish are these far-ranging oceanic species like the tunas.

Another 8 or 9 or 10 percent, depending on whether you are using tonnage, value, or where you are taking your cutoff for value considerations, another 8 to 10 percent are the Pacific salmon which again are an anadromous species and very far-ranging in their adult life. The offshore shrimp harvested off South and Central America only amounts to about 3 percent of our total U.S. picture.

All four of these basic divisions of the U.S. fishing industry are at the present time unified behind a program, and that is the program that our boys are carrying out in the Law of the Sea negotiations.

That doesn't mean that they are all satisfied. It is just the best deal they realistically think they can get. Also, it is the very important problem of timing. There are many, particularly of our coastal fishermen, who think we can't wait for 1975 or 1976 or whenever the Law of the Sea Conference might come up with a set of agreed principles or a draft treaty. Because then, after the Law of the Sea Conference has come up in 1975 or 1976 with a draft treaty, it has to be ratified by the requisite number of countries.

I think Dean Rusk pointed out that unless it is ratified by the countries that count, the Russians, British, Japanese, and ourselves, it is not going to fly, because the oceans of the world are at present dominated by a relatively small number of advanced countries, whether it is mining or fisheries or anything else.

So I would guess I would have to answer your question in the affirmative now that the fishing people are united by the sort of thing you set forth in this draft House resolution, but there are an increasing number of people, particularly in the coastal fishing interests, that think that it is too slow; that we will have to have some sort of interim legislation to protect our fish stocks and our fishermen, because, as the director of the halibut fishermen says so often, at the rate of progress, there wouldn't be any halibut left to talk about by the time we come up with the treaty.

Mr. FRASER. Just a followup question: Does the assertion of authority by our Government to protect the species represent our taking a position beyond that which we took in the past? Am I right?

Mr. WAKEFIELD. Yes, sir.

Mr. FRASER. That would put us in the position of some of our Latin American friends.

Mr. WAKEFIELD. As I tried to point out in my brief testimony, the answer is "Yes;" that if we were to assert jurisdiction over, say, the cod stocks of New England and to follow the lead of the State of Massachusetts and declare a unilateral 200-mile limit to protect the cod and flounder stocks, et cetera, off the coast of New England, our Latino friends would say, "This is what we have been telling you all the time, that this is the way to go, this is the way we are going to enforce it."

Then where are our shrimp and tuna fishermen and other segments of our industry that—even though tuna and shrimp may be 12 to 14 percent of our picture, they are a darned important 12 to 14 percent, and if any member of this committee comes from southern California or Florida they will understand.

Mr. FRASER. I will call on a Member from California, Mr. Mailliard.

Mr. MAILLIARD. I don't happen to be from southern California, but that doesn't mean I don't know about this problem. You made a very strong point that you make a distinction between the draft treaty and the policies being enunciated in Mr. Stevenson's speech, et cetera. No one else mentioned this, and I for one have been going along on the happy belief that they were one and the same thing.

I would like to know whether any of these other gentlemen have any comment on your putting them sort of 180° apart.

Mr. ELY. Might I put the language into your record? The treaty proposals said in article 27 that "except as specifically provided for in this chapter, the coastal state shall have no greater rights in the international trusteeship area off its coast than any other contracting party."

Article 26 defined the international trusteeship area as "that part of the international seabed area comprising the continental or island margin between the boundary described in article 1 (200-meter isobath) and a line, beyond the base of the continental slope or beyond the base of the slope of an island situated beyond the continental slope, where the downward inclination of the surface of the seabed declines to a gradient of 1:—" (to be defined).

Article 1 said, "The international seabed area shall be the common heritage of all mankind and the international seabed area shall comprise all areas of the seabed and subsoil of the high seas seaward of the 200-meter isobath adjacent to the coasts of continents and islands."

So we would receive back only the rights derived from the treaty and, except as delegated by the treaty, the United States would have no greater rights in the international trusteeship area off its coasts than would any other contracting party.

This is the concept of relinquishment that drew the fire of the Senate committee.

By contrast, Mr. Stevenson's statement in August 1972, said:

#### COASTAL RESOURCES GENERALLY

Mr. Chairman, in order to achieve agreement, we are prepared to agree to broad coastal state economic jurisdiction in adjacent waters and seabed areas beyond the territorial sea as part of an overall law of the sea settlement. However, the jurisdiction of the coastal state to manage the resources in these areas must be tempered by international standards which will offer reasonable prospects that the interests of other states and the international community will be protected. It is essential that coastal state jurisdiction over fisheries and over the mineral resources of the continental margins be subject to international standards and compulsory settlement of disputes.

#### SEABED RESOURCES—COASTAL AREAS

We can accept virtually complete coastal state resource management jurisdiction over resources in adjacent seabed areas if this jurisdiction is subject to international treaty limitations in five respects:

1. International treaty standards to prevent unreasonable interference with other uses of the ocean.
2. International treaty standards to protect the ocean from pollution.
3. International treaty standards to protect the integrity of investment.
4. Sharing of revenues for international community purposes.
5. Compulsory settlement of disputes.

House Resolution 216 deals with the "five respects" but it doesn't state the essential point of Mr. Stevenson's policy of announcement of August 10, 1972, namely, the acceptance of virtually complete coastal jurisdiction over seabed resources of the continental margin.

You are leaving Hamlet out of this play if you don't say that, because the resolution declares your commendation of the U.S. Draft Seaboard Treaty of August 1970 the resolution before the committee says that the draft treaty offered a practical method of implementing these goals. This is dead wrong.

Mr. MAILLIARD. Would your objection be met if that clause were removed?

Mr. ELY. Take out that "whereas" clause and put in an appropriate place a paragraph of Mr. Stevenson's language about jurisdiction on the continental margin.

Mr. MAILLIARD. Secretary Rusk, do you have any comment on that point?

Mr. RUSK. I don't, myself, draw as sharp a distinction as Mr. Ely did, because in the same article 27, paragraph 2 of that article gives to the coastal state very substantial authority with respect to the issuing, suspending, of mineral exploration and exploitation licenses, establishing work requirements and a good many other things.

I would suppose that the original concept of article 27 was that American interests might want to move over into somebody else's continental slope and do some drilling. If we were to make too rigid a view of this, in effect, national sovereignty over our own slope, we may find ourselves excluded from areas which are very attractive to some of our companies for exploitation.

So I personally would have preferred the notion of coastal state management subject to international standards developed in the conventions.

Mr. MAILLIARD. Which would appear to be our present position.

Mr. RUSK. Yes.

Mr. MAILLIARD. But I felt as you did, rather than as Mr. Ely did, that that was an evolution of the words in the draft treaty rather than a reversal.

Mr. RUSK. I gather we have dropped the word "trusteeship," for that matter, between the isobath and the slope, partially because it carries connotations which are distasteful in certain parts of the world and also partly because we may find it extremely difficult to negotiate the outreach of American complete control to such a distance.

It bothers me a little. I can see the weight of some of the things that Mr. Ely has said, but I would, myself, hate to see us open the door for the kind of race for the control of these areas, a median line across the Atlantic dividing the North American and European land mass. After all, Spain and Portugal drew such a line.

Mr. FRASER. Wouldn't Bermuda take a large piece of that?

Mr. RUSK. It would. I am worried about the harsh assumption of national jurisdiction too far, because that easily develops into the kind of race that I think can be very dangerous. My guess is that if we are not careful, that as we adopt a seabeds policy we had better build up our Navy and Air Force substantially to give effect to it.

Mr. ELY. Secretary Rusk has painted very vividly the strawman that has dominated American policy in the drafting of this treaty. The fact is that under the decision of the International Court of Justice in the North Sea Continental Shelf cases and in the Convention on the Continental Shelf, there is no authority for claiming national jurisdiction out to the mid-Atlantic; this extends to, but is limited by, the continental margin. That is the whole essence.

The language in the convention that bears on this is in articles 1 and 2. These articles provide:

## ARTICLE 1

For the purpose of these articles, the term "Continental Shelf" is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

## ARTICLE 2

1. The coastal state exercises over the Continental Shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

2. The rights referred to in paragraph 1 of this article are exclusive in the sense that if the coastal state does not explore the Continental Shelf or exploit its natural resources, no one may undertake these activities, or make a claim to the Continental Shelf, without the express consent of the coastal state.

3. The rights of the coastal state over the Continental Shelf do not depend on

Of course, as article 3 says:

## ARTICLE 3

The rights of the coastal state over the Continental Shelf do not affect the legal status of the superjacent waters as high seas, or that of the airspace above occupation, effective, or national, or on any express proclamation. those waters.

The language permitting exploitation was originated in the meeting of the American States at Ciudad Trujillo in 1956. They were discontented with a recommendation of the International Law Commission that national jurisdiction be bounded by the 200-meter contour. Instead, they insisted on the addition of the exploitability language, with the explanation that they must insist on jurisdiction that included not only the 200 meters but the entire continental slope, the continental terrace, down to the greatest depths. But there was no suggestion that the coastal states jurisdiction extended beyond the continental slope.

Similarly, the decision of the International Court of Justice, which held that articles 1 and 2 of the Convention state customary law as well as conventional law, said that the concept was that the land dominates the sea to the extent that the submarine areas are adjacent to the land territory of the coastal state.

I would be a little hard put to say the mid-Atlantic is an extension of the land territory of the United States. To the contrary, the geomorphic boundary between the continent and the abyssal ocean floor is definite. The margin between the rocks of the ocean floor is one of the great facts of life on this planet.

The notion that we should somehow surrender our rights to that margin because if we did not our claim might take us out to the mid-Atlantic, has, with all due respect, no weight whatever. That is no reason to renounce what we have.

I invite your attention to the report of the Special Committee on the Outer Continental Shelf to the Senate Committee on Interior and Insular Affairs (91st Cong., 2d sess.), in which they said:

Whatever renunciation might be intended to be made through the adoption of a future seabed treaty, no renunciation should be permitted to be made which in any way encroaches upon the heart of our sovereign rights under the 1958 Geneva Convention. We construe the heart of our sovereign rights under the 1958 Geneva Convention to consist of the following:

- (1) The exclusive ownership of the mineral estate and sedentary species of the entire continental margin;
- (2) The exclusive right to control access for exploration and exploitation of the entire continental margin; and
- (3) The exclusive jurisdiction to fully regulate and control the exploration and exploitation of the natural resources of the entire continental margin.

Regarding the proposal suggesting renunciation of the heart of our sovereign rights, we have three objections:

- (1) The offer to renounce our sovereign rights beyond the 200-meter isobath could cast a cloud on our present title to the resources of our continental margin;
- (2) The renunciation of our sovereign rights to the resources of our continental margin beyond the 200-meter isobath in no way guarantees the willingness of the international community to redelegate functionally to us the same rights we would renounce; and
- (3) Our sovereign rights to explore and exploit our continental margin, although reaffirmed by the 1958 Geneva Shelf Convention, are nevertheless inherent rights which have vested by virtue of the natural extension beneath the sea of our sovereign land territory. Our sovereign rights to the resources of this area are not dependent upon the acquiescence and approval of the international community. To renounce these inherent rights and to ask that they be returned in part to us merely requests the international community to give us that which, ipso facto, and ab initio, rightfully ours to begin with.

They are right about that. The International Court of Justice used that language. We cannot assume that we are writing on a clean slate, that the International Court of Justice case never happened. There is nothing to the story that unless the law is changed the coastal States can race into the middle of the Atlantic.

Mr. RUSK. Mr. Chairman, I would request a very brief comment. I would be glad to see a distance established so that we know what we are talking about with respect to the slope.

When President Truman issued his proclamation in 1945 on the Continental Shelf, the technology of exploitation was rather primitive. Although he did not include the 200 meters in the proclamation, there was the general assumption at the time that he was talking about something roughly like 200 meters.

Between 1945 and 1958, technology indicated a capacity to go beyond the 200-meter step. So, the Convention said "or beyond that limit," not to the continental slope, but to where the depth of the super-adjacent waters admits exploitation of the area.

If technology moves again to where they can go down to 7,000 or 8,000 feet, whatever it is, there is just a little room for doubt in my mind that maybe there will not be those who will say:

Aha! Exploitability is the test. This is a continuation of the American continent.

The whole world is a continuation of the continent, when you get to a certain point. The test is exploitability. Therefore, we ought to reach out again.

It is that kind of thing that bothers me. I am not so worried about what happens today and where oil people will want to dig. I am thinking about 20 years from now.

Mr. ELX. There is much to what Secretary Rusk says. But it is a problem very simply cured. A protocol to article 1 will do it: "Jurisdiction shall not extend beyond the continental margin."

The Latin countries are proposing a 200-mile resource zone. So far as the submarine real estate is concerned, there is no objection. You could very well say, "the 200-mile line or continental margin, whichever is further."

We know the 200-mile resource zone relates to fishing. There is no correlation at all between the justifiable geographical extent of jurisdiction over submarine minerals and that over the water column. Those separate and distinct rights have to be sorted out.

There is confusion in talking about an economic resource zone as if all resources were in the same package.

Mr. RUSK. They are distinguishable, but politically they are linked together. Our friends in Latin America say:

Well, look, you North Americans are interested in the resources of the ocean beds. That is all right. This had not been known to international law before you took it. But—they say—we happen to be interested in the living resources of the sea. There is no difference in political view between the living resources and nodules. So if you can claim the nonliving resources, we can claim the living resources.

However, I did not come here to debate Mr. Ely.

Mr. DUBS. I look upon the problem of the Seabed Treaty of 1970 in different and perhaps more pragmatic terms. I don't think it is a document that is worthy of the same place with respect to policy that the President's May 23 policy has, or Mr. Stevenson's speech of August 10. I think there is a danger in giving it too strong a place.

The danger comes because it is a working document. In the U.N. negotiations, it is no longer a coherent, whole thing; it is a document whose parts have been spread throughout the negotiation. The negotiation with respect to various pieces of that document is now being determined by policy, not by the document itself.

Therefore, by giving it this strong listing in the resolution, you may in fact be making it more difficult for the delegation to negotiate these terms and to reach accommodations which they otherwise might be able to do more easily by depending on basic policy.

This does not mean that this document is not useful. It is a very useful document, notwithstanding its defects, and I see some which are different from those which have already been mentioned.

Mr. MAILLIARD. So you would think it might be advisable to leave the mention of the document out of the resolution?

Mr. DUBS. I do, or else mention it in a different fashion as a working tool of some utility. In no case should it be given policy status.

Mr. RUSK. I think probably the three of us who commented on this might agree on a conclusion without necessarily having the same reason for them. It might be well to consider either knocking out that particular "whereas" or: "Whereas the United States submitted a Draft Seabed Treaty of August 1970 as a basis for discussion \* \* \*"—simply to loosen it up.

We agree, I think, that that particular document, as a document, has been overtaken by events. Congress may not want to tie itself specifically to that particular document even in the preamble.

Mr. MAILLIARD. I know my time has long since expired.

Mr. FRASER. Mr. Fountain.

Mr. FOUNTAIN. Thank you.

I want to thank all who have testified. The testimony has been very thought-provoking, and on a subject concerning which I feel less and

less qualified, particularly when it comes to a resolution. Maybe we ought to make this a working resolution to be sure we don't tie our hands.

Chairman Fraser asked one question in an area I'd like to pursue briefly. I note that Congressman Downing of Virginia, who is chairman of the Oceanography Subcommittee of the House Merchant Marine and Fisheries Committee, has raised some questions about House Resolution 216. He expresses fears that it might have too much specificity in it, too much emphasis on rights rather than goals, so as to tie our hands.

He says the resolution is a short resolution which attempts to relate itself to a lot of suggested solutions which have thus far escaped the delegates who have been facing the problems for years. He said if we are to pass a resolution of this type, the House should set out general goals without being very specific. I want to mention some of these.

Mr. FRASER. Perhaps it would be a good time now to insert the statement of Congressman Downing in the record. Without objection, it will go in now.

[The statement follows:]

STATEMENT OF HON. THOMAS N. DOWNING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA, IN SUPPORT OF THE LAW OF THE SEA RESOLUTION

Mr. CHAIRMAN. I appreciate the opportunity to appear before the subcommittee today to make a brief statement concerning House Resolutions 216 and 296, identical resolutions now pending before your committee.

Mr. Chairman, I applaud the apparent purpose behind these resolutions, to demonstrate the interest of Members of the House in encouraging the United States representatives to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction, which is now meeting at the United Nations Headquarters in New York, in its preparatory work for the forthcoming Law of the Sea Conference. At the same time, Mr. Chairman, I must confess that I have some difficulty with the two resolutions, at least in their present form.

I have been aware, since 1967, of the developments at the United Nations relating to the initiatives to solve international law problems relating to the oceans. Although the first suggestions from the Government of Malta were concerned with regulation of sea-bed resources, subsequent developments have expanded the consideration of problems involving territorial limits, living resources, ocean pollution, and oceanographic research, problem areas which continue to trouble the nations of the world despite the efforts expended at Geneva in 1958 and the conventions which resulted therefrom. While I originally had some doubts as to the potential success of a conference dealing with so many problems, I am hopeful that the international community has become sufficiently aware of the need for an overall "Code of the Oceans," that the expanded subject matter will not deter the United Nations from ultimate success, and I support every reasonable effort to encourage the U.S. Delegation to continue its diligent work for an ocean treaty embodying the general goals referred to by President Nixon in his Ocean Policy Statement of May 23, 1970.

My difficulty, Mr. Chairman, comes from the attempt in this resolution to come to grips and suggest solutions in one short resolution which have thus far escaped the delegates who have been facing these problems for several years. It is true that some progress has been made, and it is also true, in my opinion, that the rather slow movement in the so-called "Sea-Bed Committee" cannot in any way have been caused by any lack of diligent effort on the part of the U.S. Delegation. Nevertheless, Mr. Chairman, it is my firm belief, based upon a general knowledge of the history of the "Sea-Bed Committee", that there will necessarily have to be further changes, compromises, and accommodations on the part of many nations before we can look for a successful Law of the Sea Conference.

And now, Mr. Chairman, I would like to turn to the resolutions themselves. It seems to me that, if we are to pass a resolution of this type, the House should specify general goals without being quite as specific as is the present resolution

section. Under subscript (1), I note that we specifically endorse a 12-mile territorial sea, although that concept is tied absolutely to other considerations, and should not be endorsed, unless those other considerations are obtained. I, therefore, suggest that we refer to "beyond the territorial seas," rather than "beyond a 12-mile territorial sea." I further suggest that the term "for navigation" is not sufficiently broad and that after the phrase, "for navigation," we should include the phrase, "commerce, transportation." Finally, I suggest that a period be placed after "research," and that the transit clause stand alone and read, "free transit through and over international straits."

In subscript (2), I suggest that the word, "rights," is too strong, and I recommend that it be changed to something like "implementation of the following international goals." In sub-subscript (e), I suggest that a period be placed after the word "sea," since it follows that if "an economic intermediate zone" is agreed upon the result will be obvious. I point out that under the present language the only place "if agreed upon" is mentioned is in this specific place. I see no need to bring it in here any more than anywhere else.

Finally, in subscript (4), if amended as suggested by the Honorable Howard Pollock in his testimony of last week, we are again committing what, in my opinion, is the error of too much specificity. After all, we have already changed our international position to some degree, and there is no assurance that we will not do so again. I, therefore, again suggest that the language should be more generalized and read something like, "conservation and protection of living resources, with fisheries so regulated as to recognize appropriate coastal state preferences, without excluding distant water fisheries interests."

As to the introductory clauses, Mr. Chairman, I have two suggestions. First, the clause referring to the U.S. Draft Sea-Bed Treaty of August, 1970, is not completely correct in that that U.S. working paper covered only a part of the total problem and would not, in effect, implement all the goals outlined. I, therefore, suggest the deletion of the reference. As a matter of drafting, I further suggest that the first reference to the "Sea-Bed Committee" should be to the formal name of the committee and that in the fourth introductory clause the reference should be to the "United Nations Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction (hereafter referred to as the 'Sea-Bed Committee')." Furthermore, while I do not have a copy of General Assembly Resolution 3029, I would want to be sure that the reference coincides with that resolution as to the time of convening the Conference and that its identity as an organizational session is specified. Finally, because of the timing, I believe it would be more appropriate to refer to only one preparatory meeting.

Mr. Chairman, I hope that the subcommittee will not consider my comments as either obstructive or unreasonable. I heartily endorse any action which will have a favorable impact on the early urgent conclusion of a successful Law of the Sea Conference. While my expectations for this early resolution may not be as optimistic as others, I will certainly join in any congressional endeavor to achieve early attainment of our mutual goal. While I might have some doubts as to the value of these resolutions for that purpose, I can join with you in support of the resolutions if my major concerns are resolved.

I thank you for this opportunity to express my views.

Mr. FOUNTAIN. He said:

I note that we specifically endorse a 12-mile territorial sea, although that concept is tied absolutely to other considerations and should not be endorsed unless those other considerations are obtained.

He suggests that we use the language—"beyond the territorial seas," rather than use the limited "beyond a 12-mile territorial sea."

He said that the term "for navigation" is not sufficiently broad and that we should include the phrase "commerce and transportation."

He suggested that a period be placed after research and that the transit clause should read "free transit through and over international straits."

In another paragraph he said:

In subscript (2), I suggest that the word "rights" is too strong, and I recommend that it be changed to something like "implementation of the following international goals."

I am inclined to agree that maybe, in some of those "rights" would be the more appropriate term but that in others "goal" would be more appropriate.

I would like to get your comment on this. As to the introductory clauses, he has two suggestions:

First, the clause referring to the U.S. Draft Sea-Bed Treaty of August 1970 is not completely correct in that that U.S. working paper covered only a part of the total problem and would not, in effect, implement all the goals outlined.

I believe we discussed that. He would suggest a deletion of the reference. I think we've already talked about that.

As a matter of drafting, he suggested that the first reference to the proposed "Sea-Bed Committee" should be in the formal name of the Committee and it should be "the United Nations Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction (hereinafter referred to as the 'Sea-Bed Committee').".

These are some of the suggestions which Congressman Downing makes with respect to the technical language of this resolution. I wonder if you might give us the benefit of your thinking in response to this.

Mr. ELY. I think his comments are well taken. With respect to the status of the Draft Treaty, it is fair to say that on the very cover appeared this caveat:

The draft convention and its appendixes raise a number of questions with respect to which further detailed study is clearly necessary and do not necessarily represent the definitive views of the U.S. Government. The appendixes in particular are included solely by way of example.

I think in view of that characterization of the paper by its authors, it would be better to delete entirely the reference to it in House Resolution 216.

With respect to what I mentioned earlier about my feeling that the resolution omits the whole pivot and fulcrum of current expressions of Seabed policy by Mr. Stevenson, namely the concept of virtually complete coastal state resource management jurisdiction over seabed areas of the continental margin. We should endorse Mr. Stevenson's statement on that. The resolution leaves it out.

The effect of leaving it out, while referring with praise to the Seabed Draft Treaty of 1970, is apparently to reinstate that Draft Treaty's concept of renunciation of sovereign rights seaward of the 200-meter line, and the acceptance of something less.

With respect to the gentleman's reference to the widths of the territorial sea. I sympathize with his point of view. In fairness to the American negotiators, they face a dilemma if they are indeed to recognize a 200-mile economic resource zone, because a large part of the steam, the reason, the thrust, for insistence on a territorial sea wider than 3 miles would disappear. If we are going to recognize in the Latin American countries a 200-mile economic resource zone, what does it matter whether the territorial sea is 3 or 12?

The reason for conceding the 12-mile territorial sea largely disappears.

To continue that discussion of that dilemma, if on the other hand we accept Mr. Stevenson's concession that we are indeed prepared to agree to a 12-mile territorial sea on certain conditions, that it ap-

pears to be a quid pro quo. I suppose our negotiators feel they cannot very well abandon half the equation and claim the other half.

With respect to the suggestion that you write in the word "commerce" after "navigation", I think that is a good idea.

Mr. FOUNTAIN. They also said "transportation".

Mr. ELY. Yes. I suppose to many navigation, transportation, and commerce are all cognates and mean more or less the same thing. I have no objection to adding them.

With respect to scientific research, let me say we are all in favor of it, but scientific research can mean a lot of things. The Glomar Challenger has demonstrated a capability of drilling in water 15,000 feet deep and penetrating the seabed for several thousand feet. It brought up a core saturated with hydrocarbons from the Sigsbee Knolls, beneath over 10,000 feet of water in the Gulf of Mexico. It is perfectly capable of penetrating a horizon that contains oil and gas under pressure. It is not equipped with blowout preventers. If this should happen, you would have an underwater catastrophe beyond man's management.

On one hand, that is scientific research. On the other hand, we have no wish to have a foreign vessel of that sort anchored in the Santa Barbara channel, drilling into the seabed for any purposes, including research.

Our only right to stop that in the Santa Barbara channel seaward of the 3-mile line is our right to control exploitation and exploration on the Continental Shelf under the Convention on the Continental Shelf. We have to retain that, and if we do, I can't blame another nation for saying, "Don't anchor your vessel in our waters and start drilling. Claiming it is scientific research."

I think most people think of scientific research in the sense of harmless sample collecting. It can mean more than that. You must respect the nation's right to prevent the exploitation of its seabed.

With respect to the suggestion of substituting "goals" for "rights" in the recognition clause, perhaps we should say "objectives" or some similar language. For example, I would like to think that assurance of integrity of investment is an existing right, but I might be hard put to prove it.

Certainly substantial sharing of revenues is no existing international right. If Congress decides to donate the revenues from our continental margin to an international regime, that is Congress' business, but nobody has the right now to do that against the will of Congress.

I think there is something to his point. Perhaps "objectives" is a better word.

The key to all this, to my mind, is what I have called the pivot, the substitution of the concept of existing complete coastal state management, jurisdiction, and control over the whole continental margin, for the earlier concept of the Treaty, which was renunciation of those existing rights and taking back delegated powers in substitution for what the International Court of Justice has called inherent sovereign rights.

Mr. FOUNTAIN. Secretary Rusk, would you and the others care to comment?

Mr. RUSK. One or two quick comments. I have already commented on the whereas clause on the Draft Seabed Treaty. Second, on the matter of the territorial sea, I would hope, because of the enormous

implications, despite what I said earlier about the notion of a territorial sea, the notion of sovereign jurisdiction for most purposes, that it would be important now to make that as specific as possible.

If those who want to pull away from the 12-mile territorial sea have in mind retreating to the 3-mile sea, that is just not going to work. The world has passed us by.

In 1958 and 1960, we said, "If you don't take our compromise, 6-mile territorial sea plus a 6-mile contiguous zone, we will go back to the 3-mile zone." We missed by one vote to get the "6 and 6" solution. Going back to the 6-mile territorial sea didn't make any difference. We are now outnumbered 89 to 29 on that matter.

I would hate to see us go beyond the 12-mile sea worldwide, but I think it would be an exercise in futility to try to go back to a 3-mile sea. So I would be inclined to leave the 12-mile territorial sea.

I have no objection to the addition of the word "navigation". As far as "rights", that goes along with duties, and rights and duties need to be established by well understood international laws on these matters.

Perhaps "goals" is too formless; maybe "international community interests" is a better phrase, a recognition that we all have interests in these problems right around the world, but something less than rights, because it is rights that we are trying to create by the new Law of the Sea Treaty or treaties. In a technical sense, the word "rights" may not be the appropriate word.

Mr. DUBS. I think that in the 12-mile territorial sea statement there is an essential element missing, which I believe to be a basic part of our policy. This element is that the 12-mile territorial sea is always coupled with resolution of the problem of unimpeded transit through the straits.

Now that Mr. Downing has raised that question, I see that link is missing here, and the coupling should be put back in.

Mr. FRASER. If the gentleman will yield, I think we are aware of that problem. In the Senate draft I think it is made clear. We did have an amendment prepared that would establish that point clearly.

Mr. RUSK. You can couple it, but the 3-mile limit does not have enough standing to make it have any value as a bargaining point any more.

Mr. FRASER. We were talking about the phrase "unimpeded transit through the international straits"; we would make it read "for free transit through and over international straits".

Mr. ELY. The language now in the resolution proposes protection of the freedom of the seas beyond the territorial sea, including transit through international straits. The trouble arises where the 12-mile territorial sea and straits overlap.

You are defeating your purpose if you merely say you will protect unimpeded transit through the seas beyond the territorial sea. We have said that our agreement to a 12-mile territorial sea is conditioned upon agreement upon free transit through the straits which would become territorial seas if the width of the territorial sea is expanded to 12 miles.

On that point, I for one would support the position of Mr. Stevenson that free transit through straits, which means submerged transit by submarines and free overflight, if that is a key to American na-

tional security interests, is not negotiable, no commercial interests should be heeded if it suggests a compromise of an essential national security interest.

If our Government says it must have free transit of straits and without it there will be no treaty, I say, so be it. We can live with the Conventions of 1958, inconvenient or incomplete as they may be in some respects. I would rather live with them than to sacrifice any interest that our Government says is essential for national security. I would not trade off any security interest for commercial advantage as a compromise on the American position on straits.

Having said that, let me add that the problem facing transportation of petroleum, the point Mr. Fountain raised, is in some respects a broader problem than the problem of straits. These great tankers, 250,000 tons in existence, 500,000 tons on the drawingboard, cannot be turned quickly or stopped quickly. Things have to get out of the way; even in areas as wide as the English Channel the handling of traffic is a complicated problem.

You simply cannot permit the consumers of the world to be deprived of petroleum by imposition by a coastal state of some requirements that prevent the unimpeded transportation of energy. By this I mean specifically a coastal state that might enact a law that says within  $x$  miles of our shores—50, 100, 200, whatever—no tanker shall pass with tonnage in excess of 200,000 tons, or tankers which are not doublehulled, for example.

It is essential that the standards be internationally agreed standards to carry out the objective of unimpeded international transportation. Straits are a particularly focused and concentrated arena for that problem, for example, take the Straits of Gibraltar; we don't want Spain saying, "No tanker shall transit Gibraltar with a tonnage in excess of 200,000 tons which is not double-hulled."

The international community has a historic easement of passage through the Straits of Gibraltar and similar bottlenecks. But we can not deny Spain's right to protect itself against some badly constructed ship ending up in trouble in the Straits of Gibraltar. But that problem is not restricted to straits. We need internationally agreed standards that will apply not only in straits but in the high seas generally, and, indeed, to transit through the territorial seas between points in other states.

Thus even the complete success of the U.S. position on free transit of straits would not be a total solution of the problem of unimpeded transportation. I like the gentleman's suggestion that strengthens the reference to transportation.

Mr. FOUNTAIN. Mr. Wakefield, do you have a comment?

Mr. WAKEFIELD. I want to say something that is, I am sure, very high in the minds of the members of the subcommittee already.

I have no quibble with the suggested changes you read off, none at all, nor do I have any quibble with writing section 4 on natural resources a little tighter than it is now written. It could be read two different ways at the present time.

But I do want to make the point that it is much more important in my view at this juncture to get out an imperfect resolution than to get out no resolution.

As a matter of fact, perfection in drafting is something we seldom achieve, complete perfection, whether it is a resolution or a bill. We intend to say one thing, and 10 years later the court says it says something else.

So I don't want discussion over how a certain paragraph should be formulated—as I said, I don't completely agree with 4 as drafted—I like “coastal state management” better than “coastal zone management”, but to me that is not the point.

The point is that as a matter of political reality we need the Congress to show that it is back of our team at the Law of the Sea Conference at the United Nations.

Mr. FOUNTAIN. I think the main thing Mr. Downing was emphasizing, was that if we try to be too specific we may give the implication that we are tying our hands with specifics, whereas if we adopt the goals and show the support of Congress, that that is the basic idea.

Mr. WAKEFIELD. I don't quibble with that at all.

Mr. FRASER. Mr. Findley.

Mr. FINDLEY. At least one of the witnesses mentioned the overflight possibility. Would any of you see any objection to adding to page 2, line 6, after “protection of freedom of the seas”, the words “and overflight”?

Mr. ELY. That is one of the freedoms of the seas now. You might very well add “free overflight”. Look what happened last week when Libya attacked a U.S. military plane 80 miles out over the high seas.

Mr. RUSK. Mr. Findley, perhaps if you get that in, you might want to get it in in the next line where it says “for navigation, communication,” add “overflights”, whatever you want to say there.

Mr. FINDLEY. I may have missed it, but I don't recall hearing the International Court of Justice mentioned. Some effort was made several years ago to get a review of treaties in order to bring disputes under these treaties within the jurisdiction of the International Court of Justice.

Here is a treaty in prospect. Would any of you have observations to make about the wisdom of the treaty providing for reference of disputes to the ICJ?

Mr. RUSK. Mr. Findley, despite the Connally reservation to the statute of the International Court, we have now entered into more than 40 treaties and agreements in which we accepted the jurisdiction of the International Court for disputes which arise under each particular treaty agreement.

I would think you might want to take it in two stages. I have not consulted with the executive branch on this and I don't know what they have in mind.

A first stage would be quicker, more flexible, with the reference to the International Court at the end of the day. Negotiation still remains the queen of peaceful settlement.

So if negotiation, conciliation, arbitration, something like that, does not settle a dispute, then there might be eventually a compulsory reference to the International Court.

Mr. FINDLEY. Any other comments?

Mr. DUBS. I would support Mr. Rusk in that matter. I think there are dispute settlement requirements in the treaty itself because of

the technical problems that have to be faced. So the International Court should be a court of final appeal.

Mr. ELY. Mr. Findley, I think Secretary Rusk is correct. There is an added factor, very quick interlocutory relief is essential with respect to ships. If a coastal state or any other state seizes a vessel, there must be some way to get immediate release on posting a bond. So also with interference with seabed operations that are very expensive and costly.

You might have a catastrophe of some kind in addition to a lot of money involved if these were not opportunity on the one hand for immediate injunctive effect to be given to some government to stop dangerous pollution, or on the other hand immediate release by posting bond to free a vessel.

For this reason, while I support the Court of International Justice having final jurisdiction, I think Secretary Rusk is correct that you have to have in this treaty, some place, a provision for interlocutory action, perhaps by a commission or tribunal of some kind, that could be instantly available.

Mr. FRASER. Mr. Winn.

Mr. WINN. Thank you, Mr. Chairman.

I have just one short question: I wonder, Mr. Dubs, if you could give the subcommittee an idea of how soon the U.S. industry will be ready to operate in deep sea mining.

Mr. DUBS. I perhaps can add a little more to what I said before. It is difficult to speak for the industry as a whole and I could hardly pretend to do so.

But it is quite clear that the development plans of various segments of the U.S. industry are well advanced and that a great deal of money is being spent. If I had to estimate a number it probably is on the order of \$90 million in research and development funds now, and the curve is rising. Success is being achieved in this work.

So it is well possible that there could be one ship on the ocean mining before 1976.

Whether a processing plant would be available at that time or not, we can only conjecture—one could be built in that time if the processes are available—so within that time frame it could be a reality.

I think whether it is 1976 then, or 1977 or 1978 or 1980 is going to depend on resolving some of the high risk factors involved in ocean mining.

Mr. WINN. Would you care to name some of the companies involved in this research?

Mr. DUBS. I certainly could. The Summa Corporation, of Howard Hughes has an ocean mining division. They have built two large ships which I understand—I have no private information—are being deployed at sea this year for a very large experiment.

My own company, Kennecott, has a very excellent research and development program which is well advanced in both metallurgy and mining exploration.

Deep Sea Ventures has carried their research and development work to a far extent and have stated on many occasions that they are on the verge of economic exploitation of the seas.

There are other companies in the United States that have shown an increasing interest in this field, particular in the last year.

Across the border in Canada, International Nickel is devoting a great deal of work and study to this. Several Canadian companies as well as U.S. companies have participated in the test of a Japanese mining system, a continuous line bucket system.

Going outside of the United States, there is clearly substantial activity in Japan and Europe, notably in Western Germany.

Mr. WINN. Thank you, Mr. Chairman.

Mr. FRASER. The subcommittee has received written statements in support of House Resolution 216 from the Center of Concern, Council of Washington Representatives on the United Nations, and the U.S. Committee for the Oceans. Without objection, they will be printed in the appendix of the published record.

I want to thank the witnesses for being so informative this afternoon. We have all gotten a great deal of help from your testimony.

Mr. ELY. Thank you, Mr. Chairman.

Mr. RUSK. Thank you, Mr. Chairman.

Mr. FRASER. This will conclude the hearings on House Resolution 216. The subcommittee will reconvene in open session after a few minutes recess in order to mark up House Resolution 216.

[Whereupon, at 4:12 p.m. the subcommittee adjourned.]

## APPENDIX

### MEASURES OF THE RELATIVE IMPORTANCE OF FISHERIES IN SELECTED COUNTRIES, 1970

[Dollar amounts in millions]

Country	Total fish production		GNP	Fishing value as a percent of GNP	Employment		Exports		
	Landings (millions of pounds)	Value			Fishing	Fishing as a percent of total	Fish	Total	Fish percent
Canada.....	3,037	\$186	\$84,470	0.02	165,223	0.86	\$279.0 <sup>1</sup>	\$15,558	1.8
Germany.....	1,357	106	187,996	.05	6,940	.01	57.4	34,304	.16
Iceland.....	1,618	123	481	25.6	6,150	9.02	114.6	146	78.5
Japan.....	20,522	2,548	192,280	1.3	563,000	1.12	391.0	19,447	2.0
Mexico.....	779	75	33,523	.02			63.0	1,403	4.5
Norway.....	6,570	197	11,305	1.74	55,200	3.76	259.0	2,456	10.5
Peru.....	27,806	187	5,125	3.64			294.0	1,042	28.2
Poland.....	1,035	79							
Spain.....	3,299	387	32,396	1.19	69,059	1.29	95.8	2,395	4.0
United States.....	4,907	613	974,100	.06	132,448	.17	117.0	51,500	.2
U.S.S.R.....	15,977	1,217							

<sup>1</sup> 1969 data.

<sup>2</sup> 1966 data.

<sup>3</sup> Shrimp only.

<sup>4</sup> Fish meal only.

Sources: O.E.C.D., "Review of Fisheries in O.E.C.D. Member Countries, 1970," Paris, 1971. NMFS, "Fisheries of the U.S., 1971," I.M.F., "International Financial Statistics," November 1972. International Labor Office, "Yearbook of Labor Statistics, 1969," Geneva. O.E.C.D., "Fishery Policies and Economies, 1957-1966," Paris, 1970.

## CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

The Contracting States,

RECOGNIZING that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come;

CONSCIOUS of the ever-growing value of wild fauna and flora from aesthetic, scientific, cultural, recreational and economic points of view;

RECOGNIZING that peoples and States are and should be the best protectors of their own wild fauna and flora;

RECOGNIZING, in addition, that international cooperation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade;

CONVINCED of the urgency of taking appropriate measures to this end;

HAVE AGREED as follows:

### ARTICLE I

#### DEFINITIONS

For the purpose of the present Convention, unless the context otherwise requires:

(a) "Species" means any species, subspecies, or geographically separate population thereof;

(b) "Specimen" means:

(i) any animal or plant, whether alive or dead;

(ii) in the case of an animal: for species included in Appendices I and II, any readily recognizable part or derivative thereof; and for species included in Appendix III, any readily recognizable part or derivative thereof specified in Appendix III in relation to the species; and

(iii) in the case of a plant: for species included in Appendix I, any readily recognizable part or derivative thereof; and for species included in Appendices II and III, any readily recognizable part or derivative thereof specified in Appendices II and III in relation to the species;

(c) "Trade" means export, re-export, import and introduction from the sea;

(d) "Re-export" means export of any specimen that has previously been imported;

(e) "Introduction from the sea" means transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State;

(f) "Scientific Authority" means a national scientific authority designated in accordance with Article IX;

(g) "Management Authority" means a national management authority designated in accordance with Article IX;

(h) "Party" means a State for which the present Convention has entered into force.

## ARTICLE II

### FUNDAMENTAL PRINCIPLES

1. Appendix I shall include all species threatened with extinction which are or may be affected by trade. Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances.

2. Appendix II shall include:

(a) all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and

(b) other species which must be subject to regulation in order that trade in specimens of certain species referred to in sub-paragraph (a) of this paragraph may be brought under effective control.

3. Appendix III shall include all species which any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other parties in the control of trade.

4. The Parties shall not allow trade in specimens of species included in Appendices I, II and III except in accordance with the provisions of the present Convention.

## ARTICLE III

### REGULATION OF TRADE IN SPECIMENS OF SPECIES INCLUDED IN APPENDIX I

1. All trade in specimens of species included in Appendix I shall be in accordance with the provisions of this Article.

2. The export of any specimen of a species included in Appendix I shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:

(a) a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species;

(b) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora;

(c) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment; and

(d) a Management Authority of the State of export is satisfied that an import permit has been granted for the specimen.

3. The import of any specimen of a species included in Appendix I shall require the prior grant and presentation of an import permit

and either an export permit or a re-export certificate. An import permit shall only be granted when the following conditions have been met:

(a) a Scientific Authority of the State of import has advised that the import will be for purposes which are not detrimental to the survival of the species involved;

(b) a Scientific Authority of the State of import is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it; and

(c) a Management Authority of the State of import is satisfied that the specimen is not to be used for primarily commercial purposes.

4. The re-export of any specimen of a species included in Appendix I shall require the prior grant and presentation of a re-export certificate. A re-export certificate shall only be granted when the following conditions have been met:

(a) a Management Authority of the State of re-export is satisfied that the specimen was imported into that State in accordance with the provisions of the present Convention;

(b) a Management Authority of the State of re-export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment; and

(c) a Management Authority of the State of re-export is satisfied that an import permit has been granted for any living specimen.

5. The introduction from the sea of any specimen of a species included in Appendix I shall require the prior grant of a certificate from a Management Authority of the State of introduction. A certificate shall only be granted when the following conditions have been met:

(a) a Scientific Authority of the State of introduction advises that the introduction will not be detrimental to the survival of the species involved;

(b) a Management Authority of the State of introduction is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it; and

(c) a Management Authority of the State of introduction is satisfied that the specimen is not to be used for primarily commercial purposes.

#### ARTICLE IV

##### REGULATION OF TRADE IN SPECIMENS OF SPECIES INCLUDED IN APPENDIX II

1. All trade in specimens of species included in Appendix II shall be in accordance with the provisions of this Article.

2. The export of any specimen of a species included in Appendix II shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:

(a) a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species:

(b) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora; and

(c) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

3. A Scientific Authority in each Party shall monitor both the export permits granted by that State for specimens of species included in Appendix II and the actual exports of such specimens. Whenever a Scientific Authority determines that the export of specimens of any such species should be limited in order to maintain that species throughout its range at a level consistent with its role in the ecosystems in which it occurs and well above the level at which that species might become eligible for inclusion in Appendix I, the Scientific Authority shall advise the appropriate Management Authority of suitable measures to be taken to limit the grant of export permits for specimens of that species.

4. The import of any specimen of a species included in Appendix II shall require the prior presentation of either an export permit or a re-export certificate.

5. The re-export of any specimen of a species included in Appendix II shall require the prior grant and presentation of a re-export certificate. A re-export certificate shall only be granted when the following conditions have been met:

(a) a Management Authority of the State of re-export is satisfied that the specimen was imported into that State in accordance with the provisions of the present Convention; and

(b) a Management Authority of the State of re-export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

6. The introduction from the sea of any specimen of a species included in Appendix II shall require the prior grant of a certificate from a Management Authority of the State of introduction. A certificate shall only be granted when the following conditions have been met:

(a) a Scientific Authority of the State of introduction advises that the introduction will not be detrimental to the survival of the species involved; and

(b) a Management Authority of the State of introduction is satisfied that any living specimen will be so handled as to minimize the risk of injury, damage to health or cruel treatment.

7. Certificates referred to in paragraph 6 of this Article may be granted on the advice of a Scientific Authority, in consultation with other national scientific authorities or, when appropriate, international scientific authorities, in respect of periods not exceeding one year for total numbers of specimens to be introduced in such periods.

## ARTICLE V

REGULATION OF TRADE IN SPECIMENS OF SPECIES INCLUDED IN  
APPENDIX III

1. All trade in specimens of species included in Appendix III shall be in accordance with the provisions of this Article.

2. The export of any specimen of a species included in Appendix III from any State which has included that species in Appendix III shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:

(a) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora; and

(b) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

3. The import of any specimen of a species included in Appendix III shall require, except in circumstances to which paragraph 4 of this Article applies, the prior presentation of a certificate of origin and, where the import is from a State which has included that species in Appendix III, an export permit.

4. In the case of re-export, a certificate granted by the Management Authority of the State of re-export that the specimen was processed in that State or is being re-exported shall be accepted by the State of import as evidence that the provisions of the present Convention have been complied with in respect of the specimen concerned.

## ARTICLE VI

## PERMITS AND CERTIFICATES

1. Permits and certificates granted under the provisions of Articles III, IV, and V shall be in accordance with the provisions of this Article.

2. An export permit shall contain the information specified in the model set forth in Appendix IV, and may only be used for export within a period of six months from the date on which it was granted.

3. Each permit or certificate shall contain the title of the present Convention, the name and any identifying stamp of the Management Authority granting it and a control number assigned by the Management Authority.

4. Any copies of a permit or certificate issued by a Management Authority shall be clearly marked as copies only and no such copy may be used in place of the original, except to the extent endorsed thereon.

5. A separate permit or certificate shall be required for each consignment of specimens.

6. A Management Authority of the State of import of any specimen shall cancel and retain the export permit or re-export certificate and any corresponding import permit presented in respect of the import of that specimen.

7. Where appropriate and feasible a Management Authority may affix a mark upon any specimen to assist in identifying the specimen. For these purposes "mark" means any indelible imprint, lead seal or other suitable means of identifying a specimen, designed in such a way as to render its imitation by unauthorized persons as difficult as possible.

## ARTICLE VII

### EXEMPTIONS AND OTHER SPECIAL PROVISIONS RELATING TO TRADE

1. The provisions of Articles III, IV and V shall not apply to the transit or trans-shipment of specimens through or in the territory of a Party while the specimens remain in Customs control.

2. Where a Management Authority of the State of export or re-export is satisfied that a specimen was acquired before the provisions of the present Convention applied to that specimen, the provisions of Articles III, IV and V shall not apply to that specimen where the Management Authority issues a certificate to that effect.

3. The provisions of Articles III, IV and V shall not apply to specimens that are personal or household effects. This exemption shall not apply where:

(a) in the case of specimens of a species included in Appendix I, they were acquired by the owner outside his State of usual residence, and are being imported into that State; or

(b) in the case of specimens of species included in Appendix II:

(i) they were acquired by the owner outside his State of usual residence and in a State where removal from the wild occurred;

(ii) they are being imported into the owner's State of usual residence; and

(iii) the State where removal from the wild occurred requires the prior grant of export permits before any export of such specimens;

unless a Management Authority is satisfied that the specimens were acquired before the provisions of the present Convention applied to such specimens.

4. Specimens of an animal species included in Appendix I bred in captivity for commercial purposes, or of a plant species included in Appendix I artificially propagated for commercial purposes, shall be deemed to be specimens of species included in Appendix II.

5. Where a Management Authority of the State of export is satisfied that any specimen of an animal species was bred in captivity or any specimen of a plant species was artificially propagated, or is a part of such an animal or plant or was derived therefrom, a certificate by that Management Authority to that effect shall be accepted in lieu of any of the permits or certificates required under the provisions of Articles III, IV or V.

6. The provisions of Articles III, IV and V shall not apply to the noncommercial loan, donation or exchange between scientists or scientific institutions registered by a Management Authority of their State,

of herbarium specimens, other preserved, dried or embedded museum specimens, and live plant material which carry a label issued or approved by a Management Authority.

7. A Management Authority of any State may waive the requirements of Articles III, IV and V and allow the movement without permits or certificates of specimens which form part of a travelling zoo, circus, menagerie, plant exhibition or other travelling exhibition provided that:

(a) the exporter or importer registers full details of such specimens with that Management Authority;

(b) the specimens are in either of the categories specified in paragraphs 2 or 5 of this Article; and

(c) the Management Authority is satisfied that any living specimen will be so transported and cared for as to minimize the risk of injury, damage to health or cruel treatment.

## ARTICLE VIII

### MEASURES TO BE TAKEN BY THE PARTIES

1. The Parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof. These shall include measures:

(a) to penalize trade in, or possession of, such specimens, or both; and

(b) to provide for the confiscation or return to the State of export of such specimens.

2. In addition to the measures taken under paragraph 1 of this Article, a Party may, when it deems it necessary, provide for any method of internal reimbursement for expenses incurred as a result of the confiscation of a specimen traded in violation of the measures taken in the application of the provisions of the present Convention.

3. As far as possible, the Parties shall ensure that specimens shall pass through any formalities required for trade with a minimum of delay. To facilitate such passage, a Party may designate ports of exit and ports of entry at which specimens must be presented for clearance. The Parties shall ensure further that all living specimens, during any period of transit, holding or shipment, are properly cared for so as to minimize the risk of injury, damage to health or cruel treatment.

4. Where a living specimen is confiscated as a result of measures referred to in paragraph 1 of this Article:

(a) the specimen shall be entrusted to a Management Authority of the State of confiscation;

(b) the Management Authority shall, after consultation with the State of export, return the specimen to that State at the expense of that State, or to a rescue centre or such other place as the Management Authority deems appropriate and consistent with the purposes of the present Convention; and

(c) the Management Authority may obtain the advice of a Scientific Authority, or may, whenever it considers it desirable, consult the Secretariat in order to facilitate the decision under subparagraph (b) of this paragraph, including the choice of a rescue centre or other place.

5. A rescue centre as referred to in paragraph 4 of this Article means an institution designated by a Management Authority to look after the welfare of living specimens, particularly those that have been confiscated.

6. Each Party shall maintain records of trade in specimens of species included in Appendices I, II and III which shall cover:

- (a) the names and addresses of exporters and importers; and
- (b) the number and type of permits and certificates granted; the States with which such trade occurred; the numbers or quantities and types of specimens, names of species as included in Appendices I, II and III and, where applicable, the size and sex of the specimens in question.

7. Each Party shall prepare periodic reports on its implementation of the present Convention and shall transmit to the Secretariat:

- (a) an annual report containing a summary of the information specified in sub-paragraph (b) of paragraph 6 of this Article; and
- (b) a biennial report on legislative, regulatory and administrative measures taken to enforce the provisions of the present Convention.

8. The information referred to in paragraph 7 of this Article shall be available to the public where this is not inconsistent with the law of the Party concerned.

## ARTICLE IX

### MANAGEMENT AND SCIENTIFIC AUTHORITIES

1. Each Party shall designate for the purposes of the present Convention:

- (a) one or more Management Authorities competent to grant permits or certificates on behalf of that Party; and
- (b) one or more Scientific Authorities.

2. A State depositing an instrument of ratification, acceptance, approval or accession shall at that time inform the Depositary Government of the name and address of the Management Authority authorized to communicate with other Parties and with the Secretariat.

3. Any changes in the designations or authorizations under the provisions of this Article shall be communicated by the Party concerned to the Secretariat for transmission to all other Parties.

4. Any Management Authority referred to in paragraph 2 of this Article shall if so requested by the Secretariat or the Management Authority of another Party, communicate to it impression of stamps, seals or other devices used to authenticate permits or certificates.

## ARTICLE X

### TRADE WITH STATES NOT PARTY TO THE CONVENTION

Where export or re-export is to, or import is from, a State not a party to the present Convention, comparable documentation issued by the competent authorities in that State which substantially conforms with the requirements of the present Convention for permits and certificates may be accepted in lieu thereof by any Party.

## ARTICLE XI

## CONFERENCE OF THE PARTIES

1. The Secretariat shall call a meeting of the Conference of the Parties not later than two years after the entry into force of the present Convention.

2. Thereafter the Secretariat shall convene regular meetings at least once every two years, unless the Conference decides otherwise, and extraordinary meetings at any time on the written request of at least one-third of the Parties.

3. At meetings, whether regular or extraordinary, the Parties shall review the implementation of the present Convention and may:

(a) make such provision as may be necessary to enable the Secretariat to carry out its duties;

(b) consider and adopt amendments to Appendices I and II in accordance with Article XV;

(c) review the progress made towards the restoration and conservation of the species included in Appendices I, II and III;

(d) receive and consider any reports presented by the Secretariat or by any Party; and

(e) where appropriate, make recommendations for improving the effectiveness of the present Convention.

4. At each regular meeting, the Parties may determine the time and venue of the next regular meeting to be held in accordance with the provisions of paragraph 2 of this Article.

5. At any meeting, the Parties may determine and adopt rules of procedure for the meeting.

6. The United Nations, its Specialized Agencies and the International Atomic Energy Agency, as well as any State not a Party to the present Convention, may be represented at meetings of the Conference by observers, who shall have the right to participate but not to vote.

7. Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the Parties present object:

(a) international agencies or bodies, either governmental or non-governmental, and national governmental agencies and bodies; and

(b) national non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located. Once admitted, these observers shall have the right to participate but not to vote.

## ARTICLE XII

## THE SECRETARIAT

1. Upon entry into force of the present Convention, a Secretariat shall be provided by the Executive Director of the United Nations

Environment Programme. To the extent and in the manner he considers appropriate, he may be assisted by suitable inter-governmental or non-governmental international or national agencies and bodies technically qualified in protection, conservation and management of wild fauna and flora.

2. The functions of the Secretariat shall be:

- (a) to arrange for and service meetings of the Parties;
- (b) to perform the functions entrusted to it under the provisions of Articles XV and XVI of the present Convention;
- (c) to undertake scientific and technical studies in accordance with programmes authorized by the Conference of the Parties as will contribute to the implementation of the present Convention, including studies concerning standards for appropriate preparation and shipment of living specimens and the means of identifying specimens;
- (d) to study the reports of Parties and to request from Parties such further information with respect thereto as it deems necessary to ensure implementation of the present Convention;
- (e) to invite the attention of the Parties to any matter pertaining to the aims of the present Convention;
- (f) to publish periodically and distribute to the Parties current editions of Appendices I, II and III together with any information which will facilitate identification of specimens of species included in those Appendices.
- (g) to prepare annual reports to the Parties on its work and on the implementation of the present Convention and such other reports as meetings of the Parties may request;
- (h) to make recommendations for the implementation of the aims and provisions of the present Convention, including the exchange of information of a scientific or technical nature;
- (i) to perform any other function as may be entrusted to it by the Parties.

### ARTICLE XIII

#### INTERNATIONAL MEASURES

1. When the Secretariat in the light of information received is satisfied that any species included in Appendices I or II is being affected adversely by trade in specimens of that species or that the provisions of the present Convention are not being effectively implemented, it shall communicate such information to the authorized Management Authority of the Party or Parties concerned.

2. When any Party receives a communication as indicated in paragraph 1 of this Article, it shall, as soon as possible, inform the Secretariat of any relevant facts insofar as its laws permit and, where appropriate, propose remedial action. Where the Party considers that an inquiry is desirable, such inquiry may be carried out by one or more persons expressly authorized by the Party.

3. The information provided by the Party or resulting from any inquiry as specified in paragraph 2 of this Article shall be reviewed by the next Conference of the Parties which may make whatever recommendations it deems appropriate.

## ARTICLE XIV

## EFFECT ON DOMESTIC LEGISLATION AND INTERNATIONAL CONVENTIONS

1. The provisions of the present Convention shall in no way affect the right of Parties to adopt:

(a) stricter domestic measures regarding the conditions for trade, taking possession or transport of specimens of species included in Appendices I, II and III, or the complete prohibition thereof; or

(b) domestic measures restricting or prohibiting trade, taking possession, or transport of species not included in Appendices I, II or III.

2. The provisions of the present Convention shall in no way affect the provisions of any domestic measures or the obligations of Parties deriving from any treaty, convention, or international agreement relating to other aspects of trade, taking possession, or transport of specimens which is in force or subsequently may enter into force for any Party including any measure pertaining to the Customs, public health, veterinary or plant quarantine fields.

3. The provisions of the present Convention shall in no way affect the provisions of, or the obligations deriving from, any treaty, convention or international agreement concluded or which may be concluded between States creating a union or regional trade agreement establishing or maintaining a common external customs control and removing customs control between the parties thereto insofar as they relate to trade among the States members of the union or agreement.

4. A State party to the present Convention, which is also a party to any other treaty, convention or international agreement which is in force at the time of the coming into force of the present Convention and under the provisions of which protection is afforded to marine species included in Appendix II, shall be relieved of the obligations imposed on it under the provisions of the present Convention with respect to trade in specimens of species included in Appendix II that are taken by ships registered in that State and in accordance with the provisions of such other treaty, convention or international agreement.

5. Notwithstanding the provisions of Articles III, IV and V, any export of a specimen taken in accordance with paragraph 4 of this Article shall only require a certificate from a Management Authority of the State of introduction to the effect that the specimen was taken in accordance with the provisions of the other treaty, convention or international agreement in question.

6. Nothing in the present Convention shall prejudice the codification and development of the law of the sea by the United Nations Conference on the Law of the Sea convened pursuant to Resolution 2750 C (XXV) of the General Assembly of the United Nations nor the present or future claims and legal views of any State concerning the law of the sea and the nature and extent of coastal and flag State jurisdiction.

## ARTICLE XV

## AMENDMENTS TO APPENDICES I AND II

1. The following provisions shall apply in relation to amendments to Appendices I and II at meetings of the Conference of the Parties:

(a) Any Party may propose an amendment to Appendix I or II for consideration at the next meeting. The text of the proposed amendment shall be communicated to the Secretariat at least 150 days before the meeting. The Secretariat shall consult the other Parties and interested bodies on the amendment in accordance with the provisions of sub-paragraphs (b) and (c) of paragraph 2 of this Article and shall communicate the response to all Parties not later than 30 days before the meeting.

(b) Amendments shall be adopted by a two-thirds majority of Parties present and voting. For these purposes "Parties present and voting" means Parties present and casting an affirmative or negative vote. Parties abstaining from voting shall not be counted among the two-thirds required for adopting an amendment.

(c) Amendments adopted at a meeting shall enter into force 90 days after that meeting for all Parties except those which make a reservation in accordance with paragraph 3 of this Article.

2. The following provisions shall apply in relation to amendments to Appendices I and II between meetings of the Conference of the Parties:

(a) Any Party may propose an amendment to Appendix I or II for consideration between meetings by the postal procedures set forth in this paragraph.

(b) For marine species, the Secretariat shall, upon receiving the text of the proposed amendment, immediately communicate it to the Parties. It shall also consult inter-governmental bodies having a function in relation to those species especially with a view to obtaining scientific data these bodies may be able to provide and to ensuring co-ordination with any conservation measures enforced by such bodies. The Secretariat shall communicate the views expressed and data provided by these bodies and its own findings and recommendations to the Parties as soon as possible.

(c) For species other than marine species, the Secretariat shall, upon receiving the text of the proposed amendment, immediately communicate it to the Parties, and, as soon as possible thereafter, its own recommendations.

(d) Any Party may, within 60 days of the date on which the Secretariat communicated its recommendations to the Parties under sub-paragraphs (b) or (c) of this paragraph, transmit to the Secretariat any comments on the proposed amendment together with any relevant scientific data and information.

(e) The Secretariat shall communicate the replies received together with its own recommendations to the Parties as soon as possible.

(f) If no objection to the proposed amendment is received by the Secretariat within 30 days of the date the replies and recommendations were communicated under the provisions of sub-paragraph (e) of this paragraph, the amendment shall enter into force 90 days later

for all Parties except those which make a reservation in accordance with paragraph 3 of this Article.

(g) If an objection by any Party is received by the Secretariat, the proposed amendment shall be submitted to a postal vote in accordance with the provisions of sub-paragraphs (h), (i) and (j) of this paragraph.

(h) The Secretariat shall notify the Parties that notification of objection has been received.

(i) Unless the Secretariat receives the votes for, against or in abstention from at least one-half of the Parties within 60 days of the date of notification under sub-paragraph (h) of this paragraph, the proposed amendment shall be referred to the next meeting of the Conference for further consideration.

(j) Provided that votes are received from one-half of the Parties, the amendment shall be adopted by a two-thirds majority of Parties casting an affirmative or negative vote.

(k) The Secretariat shall notify all Parties of the result of the vote.

(l) If the proposed amendment is adopted it shall enter into force 90 days after the date of the notification by the Secretariat of its acceptance for all Parties except those which make a reservation in accordance with paragraph 3 of this Article.

3. During the period of 90 days provided for by sub-paragraph (c) of paragraph 1 or sub-paragraph (1) of paragraph 2 of this Article any Party may by notification in writing to the Depositary Government make a reservation with respect to the amendment. Until such reservation is withdrawn the Party shall be treated as a State not a party to the present Convention with respect to trade in the species concerned.

## ARTICLE XVI

### APPENDIX III AND AMENDMENTS THERETO

1. Any party may at any time submit to the Secretariat a list of species which it identifies as being subject to regulation within its jurisdiction for the purpose mentioned in paragraph 3 of Article II. Appendix III shall include the names of the Parties submitting the species for inclusion therein, the scientific names of the species so submitted, and any parts or derivatives of the animals or plants concerned that are specified in relation to the species for the purposes of sub-paragraph (b) of Article I.

2. Each list submitted under the provisions of paragraph 1 of this Article shall be communicated to the Parties by the Secretariat as soon as possible after receiving it. The list shall take effect as part of Appendix III 90 days after the date of such communication. At any time after the communication of such list, any Party may by notification in writing to the Depositary Government enter a reservation with respect to any species or any parts or derivatives, and until such reservation is withdrawn, the State shall be treated as a State not a Party to the present Convention with respect to trade in the species or part or derivative concerned.

3. A Party which has submitted a species for inclusion in Appendix III may withdraw it at any time by notification to the Secretariat

which shall communicate the withdrawal to all Parties. The withdrawal shall take effect 30 days after the date of such communication.

4. Any Party submitting a list under the provisions of paragraph 1 of this Article shall submit to the Secretariat a copy of all domestic laws and regulations applicable to the protection of such species, together with any interpretations which the Party may deem appropriate or the Secretariat may request. The Party shall, for as long as the species in question is included in Appendix III, submit any amendments of such laws and regulations or any new interpretations as they are adopted.

## ARTICLE XVII

### AMENDMENT OF THE CONVENTION

1. An extraordinary meeting of the Conference of the Parties shall be convened by the Secretariat on the written request of at least one-third of the Parties to consider and adopt amendments to the present Convention. Such amendments shall be adopted by a two-thirds majority of Parties present and voting. For these purposes "Parties present and voting" means Parties present and casting an affirmative or negative vote. Parties abstaining from voting shall not be counted among the two-thirds required for adopting an amendment.

2. The text of any proposed amendment shall be communicated by the Secretariat to all Parties at least 90 days before the meeting.

3. An amendment shall enter into force for the Parties which have accepted it 60 days after two-thirds of the Parties have deposited an instrument of acceptance of the amendment with the Depositary Government. Thereafter, the amendment shall enter into force for any other Party 60 days after that Party deposits its instrument of acceptance of the amendment.

## ARTICLE XVIII

### RESOLUTION OF DISPUTES

1. Any dispute which may arise between two or more Parties with respect to the interpretation or application of the provisions of the present Convention shall be subject to negotiation between the Parties involved in the dispute.

2. If the dispute cannot be resolved in accordance with paragraph 1 of this Article, the Parties may, by mutual consent, submit the dispute to arbitration, in particular that of the Permanent Court of Arbitration at The Hague, and the Parties submitting the dispute shall be bound by the arbitral decision.

## ARTICLE XIX

### SIGNATURE

The present Convention shall be open for signature at Washington until 30th April 1973 and thereafter at Berne until 31st December 1974.

## ARTICLE XX

## RATIFICATION, ACCEPTANCE, APPROVAL

The present Convention shall be open indefinitely for accession, or approval. Instruments of ratification, acceptance or approval shall be deposited with the Government of the Swiss Confederation which shall be the Depositary Government.

## ARTICLE XXI

## ACCESSION

The present Convention shall be open indefinitely for accession. Instruments of accession shall be deposited with the Depositary Government.

## ARTICLE XXII

## ENTRY INTO FORCE

1. The present Convention shall enter into force 90 days after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession, with the Depositary Government.

2. For each State which ratifies, accepts or approves the present Convention or accedes thereto after the deposit of the tenth instrument of ratification, acceptance, approval or accession, the present Convention shall enter into force 90 days after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

## ARTICLE XXIII

## RESERVATIONS

1. The provisions of the present Convention shall not be subject to general reservations. Specific reservations may be entered in accordance with the provisions of this Article and Articles XV and XVI.

2. Any State may, on depositing its instrument of ratification, acceptance, approval or accession, enter a specific reservation with regard to:

- (a) any species included in Appendix I, II or III; or
- (b) any parts or derivatives specified in relation to a species included in Appendix III.

3. Until a Party withdraws its reservation entered under the provisions of this Article, it shall be treated as a State not a party to the present Convention with respect to trade in the particular species or parts or derivatives specified in such reservation.

## ARTICLE XXIV

## DENUNCIATION

Any Party may denounce the present Convention by written notification to the Depositary Government at any time. The denunciation

shall take effect twelve months after the Depositary Government has received the notification.

## ARTICLE XXV

### DEPOSITARY

1. The original of the present Convention, in the Chinese, English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited with the Depositary Government, which shall transmit certified copies thereof to all States that have signed it or deposited instruments of accession to it.

2. The Depositary Government shall inform all signatory and acceding States and the Secretariat of signatures, deposit of instruments of ratification, acceptance, approval or accession, entry into force of the present Convention, amendments thereto, entry and withdrawal of reservations and notifications of denunciation.

3. As soon as the present Convention enters into force, a certified copy thereof shall be transmitted by the Depositary Government to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized to that effect, have signed the present Convention.

DONE at Washington this third day of March, One Thousand Nine Hundred and Seventy-three.

# APPENDIX I TO CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

## Interpretation:

1. Species included in this Appendix are referred to:
  - (a) by the name of the species; or
  - (b) as being all of the species included in a higher taxon or designated part thereof.
2. The abbreviation "spp." is used to denote all species of a higher taxon.
3. Other references to taxa higher than species are for the purposes of information or classification only.
4. An asterisk (\*) placed against the name of a species or higher taxon indicates that one or more geographically separate populations, sub-species or species of that taxon are included in Appendix II and that these populations, sub-species or species are excluded from Appendix I.
5. The symbol (-) followed by a number placed against the name of a special or higher taxon indicates the exclusion from that species or taxon of designated geographically separate population, sub-species or species as follows:
  - 101 *Lemur catta*
  - 102 Australian population
6. The symbol (+) followed by a number placed against the name of a species denotes that only a designated geographically separate population or sub-species of that species is included in this Appendix, as follows:
  - +201 Italian population only
7. The symbol (≠) placed against the name of a species or higher taxon indicates that the species concerned are protected in accordance with the International Whaling Commission's schedule of 1972.

## FAUNA

### MAMMALIA

#### Marsupialia:

##### Macropodidae

*Macropus parma*  
*Onychogalea frenata*  
*O. lunata*  
*Lagorchestes hirsutus*  
*Lagostrophus fasciatus*  
*Caloprymnus campestris*  
*Bettongia penicillata*  
*B. lesueur*  
*B. tropica*  
*Wyulda squamicaudata*  
*Burramys parvus*  
*Lasiorhinus gillespiei*

##### Phalangeridae

##### Burramyidae

##### Vombatidae

## MAMMALIA—continued

## Marsupialia—Continued

## Peramelidae

*Perameles bougainville**Chaeropus ecaudatus**Macrotis lagotis**M. leucura*

## Dasyuridae

*Planigale tenuirostris**P. subtilissima**Sminthopsis psammophila**S. longicaudata**Antechinomys laniger**Myrmecobius fasciatus rufus**Thylacinus cynocephalus*

## Thylacinidae

## Primates:

## Lemuridae

*Lemur* spp. \*—101*Lepilemur* spp.*Haplemur* spp.*Allocebus* spp.*Cheirogaleus* spp.*Microcebus* spp.*Phaner* spp.

## Indriidae

*Indri* spp.*Propithecus* spp.*Avahi* spp.

## Daubentoniidae

*Daubentonia madagascariensis*

## Callithricidae

*Leontopithecus* (*Leontideus*)

spp.

## Cebidae

*Callimico goeldii**Saimiri oerstedii**Chiropotes albinasus**Cacajao* spp.*Alouatta palliata* (*villosa*)*Ateles geoffroyi frontatus**A. g. panamensis**Brachyteles arachnoides*

## Cercopithecidae

*Cercocebus galeritus galeritus**Macaca silenus**Colobus badius rufomitratatus**C. b. kirkii**Presbytis geei**P. pileatus**P. entellus**Nasalis larvatus**Simias concolor**Pygathrix nemaeus*

## Hylobatidae

*Hylobates* spp.*Symphalangus syndactylus*

## Pongidae

*Pongo pygmaeus pygmaeus**P. p. Abelii**Gorilla gorilla*

## MAMMALIA—continued

Edentata:	
Dasypodidae	<i>Prionomys giganteus</i> (=maximus)
Pholidota:	
Manidae	<i>Manis temminckii</i>
Lagomorpha:	
Leporidae	<i>Romerolagus diazi</i> <i>Caprolagus hispidus</i>
Rodentia:	
Sciuridae	<i>Cynomys mexicanus</i>
Castoridae	<i>Castor fiber birulaia</i> <i>Castor canadensis mexicanus</i>
Muridae	<i>Zygomys pedunculatus</i> <i>Leporillus conditor</i> <i>Pseudomys novaehollandiae</i> <i>P. praeconis</i> <i>P. shortridgei</i> <i>P. fumeus</i> <i>P. occidentalis</i> <i>P. fieldi</i> <i>Notomys aquilo</i> <i>Xeromys myoides</i>
Chinchillidae	<i>Chinchilla brevicaudata bolivi-ana</i>
Cetacea:	
Plantanistidae	<i>Platanista gangetica</i>
Eschrichtidae	<i>Eschrichtius robustus</i> (glaucus) =
Balaenopteridae	<i>Balaenoptera musculus</i> ≠
Balaenidae	<i>Megaptera novaeangliae</i> ≠ <i>Balaena mysticetus</i> ≠ <i>Eubalaena</i> spp. ≠
Carnivora:	
Canidae	<i>Canis lupus monstrabilis</i> <i>Vulpes velox hebes</i>
Viverridae	<i>Prionodon pardicolor</i>
Ursidae	<i>Ursus americanus emmonsii</i> <i>U. arctos pruinosus</i> <i>U. arctos</i> * +201 <i>U. a. nelsoni</i>
Mustelidae	<i>Mustela nigripes</i> <i>Lutra longicaudis</i> (platensis/an-nectens) <i>L. felina</i> <i>L. provocax</i> <i>Pteronura brasiliensis</i> <i>Aonyx microdon</i> <i>Enhydra lutris nereis</i>
Hyaenidae	<i>Hyaena brunnea</i>

## MAMMALIA—continued

## Carnivoria—Continued

## Felidae

*Felis planiceps*  
*F. nigripes*  
*F. concolor coryi*  
*F. c. costaricensis*  
*F. c. cougar*  
*F. temminckii*  
*Felis bengalensis bengalensis*  
*F. yagouaroundi cacomitli*  
*F. y. fossata*  
*F. y. panamensis*  
*F. y. tolteca*  
*F. pardalis mearnsi*  
*F. p. mitis*  
*F. wiedii nicaraguae*  
*F. w. salvinia*  
*F. tigrina oncilla*  
*F. marmorata*  
*F. jacobita*  
*F. (Lynx) rufa escuinapae*  
*Neofelis nebulosa*  
*Panthera tigris\**  
*P. pardus*  
*P. uncia*  
*P. onca*  
*Acinonyx jubatus*

## Pinnipedia:

## Phocidae

*Monachus spp.*  
*Mirounga angustirostris*

## Proboscidea:

## Elephantidae

*Elephas maximus*

## Sirenia:

## Dugongidae

*Dugong dugon\** —102

## Trichechidae

*Trichechus manatus*  
*T. inunguis*

## Perissodactyla:

## Equidae

*Equus przewalskii*  
*E. hemionus hemionus*  
*E. h. khur*  
*E. zebra zebra*  
*Tapirus pinchaque*  
*T. bairdii*  
*T. indicus*

## Rhinocerotidae

*Rhinoceros unicornis*  
*R. sondaicus*  
*Didermocerus sumatrensis*  
*Ceratotherium simum cottoni*

## Artiodactylia:

## Suidae

*Sus salvanius*  
*Babyrussa babyrussa*

## MAMMALIA—continued

## Artiodactylia—Continued

## Camelidae

*Vicugna vicugna**Camelus bactrianus*

## Cervidae

*Moschus moschiferus moschiferus**Axis (Hyelaphus) porcinus*  
*annamiticus**A. (Hyelaphus) calamianensis**A. (Hyelaphus) kuhlii**Cervus duvauceli**C. eldi**C. elaphus hanglu**Hippocamelus bisulcus**H. antisensis**Blastoceros dichotomus**Ozotoceros bezoarticus**Pudu pudu*

## Antilocapridae

*Antilocapra americana sonoriensis**A. a. peninsularis*

## Bovidae

*Bubalus (Anoa) mindorensis**B. (Anoa) depressicornis**B. (Anoa) quarlesi**Bos gaurus**B. (grunniens) mutus**Novibos (Bos) sauveli**Bison bison athabasca**Kobus leche**Hippotragus niger variani**Oryx leucoryx**Damaliscus dorcas dorcas**Saiga tatarica mongolica**Nemorhaedus goral**Capricornis sumatraensis**Rupicapra rupicapra ornata**Capra falconeri jerdoni**C. f. megaceros**C. f. chiltanensis**Ovis orientalis ophion**O. ammon hodgsoni**O. vignei*

## AVES

## Tinamiformes:

## Tinamidae

*Tinamus solitarius*

## Podicipediformes:

## Podicipedidae

*Podilymbus gigas*

## Procellariiformes:

## Diomedidae

*Diomedea albatrus*

## Pelecaniformes:

## Sulidae

*Sula abbotti*

## Fregatidae

*Fregata andrewsi*

## AVES—continued

Ciconiiformes:	
Ciconiidae	<i>Ciconia ciconia boyciana</i>
Threskiornithidae	<i>Nipponia nippon</i>
Anseriformes:	
Anatidae	<i>Anas aucklandica nesiotis</i>
	<i>Anas oustaleti</i>
	<i>Anas laysanensis</i>
	<i>Anas diazi</i>
	<i>Cairina scutulata</i>
	<i>Rhodonessa caryophyllacea</i>
	<i>Branta canadensis leucopareia</i>
	<i>Branta sandvicensis</i>
Falconiformes:	
Cathartidae	<i>Vultur gryphus</i>
	<i>Gymnogyps californianus</i>
Accipitridae	<i>Pithecophaga jefferyi</i>
	<i>Harpia harpyja</i>
	<i>Haliaetus l. leucocephalus</i>
	<i>Haliaetus heliaca adalberti</i>
	<i>Haliaetus albicilla groenlandicus</i>
	<i>Falco peregrinus anatum</i>
	<i>Falco peregrinus tundrius</i>
	<i>Falco peregrinus peregrinus</i>
	<i>Falco peregrinus babylonicus</i>
Falconidae	
Galliformes:	
Megapodiidae	<i>Macrocephalon maleo</i>
Cracidae	<i>Crao blumenbachii</i>
	<i>Pipile p. pipile</i>
	<i>Pipile jacutinga</i>
	<i>Mitu mitu mitu</i>
	<i>Oreophasis derbianus</i>
	<i>Tympanuchus cupido attwateri</i>
	<i>Colinus virginianus ridgwayi</i>
	<i>Tragopan blythii</i>
	<i>Tragopan caboti</i>
	<i>Tragopan melanocephalus</i>
	<i>Lophophorus sclateri</i>
	<i>Lophophorus lhuysii</i>
	<i>Lophophorus impejanus</i>
	<i>Crossoptilon mantchuricum</i>
	<i>Crossoptilon crossoptilon</i>
	<i>Lophura swinhoii</i>
	<i>Lophura imperialis</i>
	<i>Lophura edwardsii</i>
	<i>Syrnaticus ellioti</i>
	<i>Syrnaticus humiae</i>
	<i>Syrnaticus mikado</i>
	<i>Polyplectron emphanum</i>
	<i>Tetraogallus tibetanus</i>
	<i>Tetraogallus caspius</i>
	<i>Cyrtonyx montezumae merriami</i>
Tetraonidae	
Phasianidae	

## AVES—continued

## Gruiformes:

## Gruidae

*Grus japonensis*  
*Grus leucogeranus*  
*Grus americana*  
*Grus canadensis pulla*  
*Grus canadensis nesiotus*  
*Grus nigricollis*  
*Grus vipio*  
*Grus monacha*  
*Tricholimnas sylvestris*  
*Rhynochetos jubatus*  
*Eupodotis bengalensis*

## Rallidae

## Rhynochetidae

## Otididae

## Charadriiformes:

## Scolopacidae

*Numenius borealis*  
*Tringa guttifer*  
*Larus relictus*

## Laridae

## Columbiformes:

## Columbidae

*Ducula mindorensis*

## Psittaciformes:

## Psittacidae

*Strigops habroptilus*  
*Rhynchopsitta pachyrhyncha*  
*Amazona leucocephala*  
*Amazona vittata*  
*Amazona guildingii*  
*Amazona versicolor*  
*Amazona imperialis*  
*Amazona rhodocorytha*  
*Amazona petrei petrei*  
*Amazona vinacea*  
*Pyrhura cruentata*  
*Anodorhynchus glaucus*  
*Anodorhynchus leari*  
*Cyanopsitta spixii*  
*Pionopsitta pileata*  
*Aratinga guaruba*  
*Psittacula krameri echo*  
*Psephotus pulcherrimus*  
*Psephotus chrysoterygius*  
*Neophema chrysogaster*  
*Neophema splendida*  
*Cyanoramphus novaezelandiae*  
*Cyanoramphus auriceps forbesi*  
*Geopsittacus occidentalis*  
*Psittacus erithacus princeps*

## Apodiformes:

## Trochilidae

## Trogoniformes:

## Trogonidae

*Ramphodon dohrnii*

*Pharomachrus mocinno mocinno*  
*Pharomachrus mocinno*  
*costaricensis*

## Strigiformes:

## Strigidae

*Otus gurneyi*

## AVES—continued

Coraciiformes:	
Bucerotidae	<i>Rhinoplax vigil</i>
Piciformes:	
Picidae	<i>Dryocopus javensis</i> <i>richardsii</i> <i>Campephilus imperialis</i>
Passeriformes:	
Cotingidae	<i>Cotinga maculata</i> <i>Xipholena atro-purpurea</i> <i>Pitta kochi</i> <i>Atrichornis clamosa</i> <i>Picathartes gymnocephalus</i> <i>Picathartes oreas</i> <i>Psophodes nigrogularis</i> <i>Amytornis goyderi</i> <i>Dasyornis brachypterus</i> <i>longirostris</i> <i>Dasyornis broadbenti littoralis</i> <i>Leucopsar rothschildi</i> <i>Meliphaga cassidia</i> <i>Zosterops albogularis</i> <i>Spinus cucullatus</i>
Pittidae	
Atrichornithidae	
Muscicapidae	
Sturnidae	
Meliphagidae	
Zosteropidae	
Fringillidae	

## AMPHIBIA

Urodela:	
Cryptobranchidae	<i>Andrias</i> (= <i>Megalobatrachus</i> ) <i>dauidianus japonicus</i> <i>Andrias</i> (= <i>Megalobatrachus</i> ) <i>dauidianus dauidianus</i>
Salientia:	
Bufonidae	<i>Bufo superciliaris</i> <i>Bufo periglenes</i> <i>Nectophrynoides</i> spp. <i>Atelopus varius zeteki</i>
Atelopodidae	

## REPTILIA

Crocodylia:	
Alligatoridae	<i>Alligator mississippiensis</i> <i>Alligator sinensis</i> <i>Melanosuchus niger</i> <i>Caiman crocodilus apaporiensis</i> <i>Caiman latirostris</i> <i>Tomistoma schlegelii</i> <i>Osteolaemus tetraspis tetraspis</i> <i>Osteolaemus tetraspis osborni</i> <i>Crocodylus cataphractus</i> <i>Crocodylus siamensis</i> <i>Crocodylus palustris palustris</i> <i>Crocodylus palustris kimbula</i> <i>Crocodylus novaeguineae</i> <i>mindorensis</i>
Crocodylidae	

## REPTILIA—continued

## Crocodylia—Continued

## Crocodylidae—Continued

*Crocodylus intermedius*  
*Crocodylus rhombifer*  
*Crocodylus moreletii*  
*Crocodylus niloticus*  
*Gavialis gangeticus*

Gavialidae  
 Testudinata:  
 Emydidae

*Batagur baska*  
*Geoclemmys* (= *Damonia*)  
*hamiltonii*  
*Geoemyda* (= *Nicoria*)  
*tricarinata*

## Testudinidae

*Kuchuga tecta tecta*  
*Morenia ocellata*  
*Terrapene coahuila*  
*Geochelone* (= *Testudo*)  
*elephantopus*  
*Geochelone* (= *Testudo*)  
*geometrica*  
*Geochelone* (= *Testudo*)  
*radiata*  
*Geochelone* (= *Testudo*)  
*yniphora*

## Cheloniidae

*Eretmochelys imbricata*  
*imbricata*

## Trionychidae

*Lepidochelys kempii*  
*Lissemys punctata punctata*  
*Trionyx ater*  
*Trionyx nigricans*  
*Trionyx gangeticus*  
*Trionyx hurum*  
*Pseudemydura umbrina*

Chelidae  
 Lacertilla:  
 Varanidae

*Varanus komodoensis*  
*Varanus flavescens*  
*Varanus bengalensis*  
*Varanus griseus*

Serpentes:  
 Boidae

*Epicrates inornatus inornatus*  
*Epicrates subflavus*  
*Python molurus molurus*

Rhynchocephalia:  
 Sphenodontidae

*Sphenodon punctatus*

## PISCES

Acipenseriformes:  
 Acipenseridae

*Acipenser brevirostrum*  
*Acipenser oxyrinchus*

Osteoglossiformes:  
 Osteoglossidae

*Scleropages formosus*

## PISCES—continued

Salmoniformes:	
Salmonidae	<i>Coregonus alpenae</i>
Cypriniformes:	
Catostomidae	<i>Chasmistes cujus</i>
Cyprinidae	<i>Probarbus jullieni</i>
Siluriformes:	
Schilbeidae	<i>Pangasianodon gigas</i>
Perciformes:	
Percidae	<i>Stizostedion vitreum glaucum</i>

## MOLLUSCA

Naiadoida:	
Unionidae	<i>Conradilla caelata</i>
	<i>Dromas dromas</i>
	<i>Epioblasma</i> (= <i>Dysnomia</i> )
	<i>florentina curtisi</i>
	<i>Epioblasma</i> (= <i>Dysnomia</i> )
	<i>florentina florentina</i>
	<i>Epioblasma</i> (= <i>Dysnomia</i> )
	<i>sampsoni</i>
	<i>Epioblasma</i> (= <i>Dysnomia</i> )
	<i>sulcata perobliqua</i>
	<i>Epioblasma</i> (= <i>Dysnomia</i> )
	<i>torulosa gubernaculum</i>
	<i>Epioblasma</i> (= <i>Dysnomia</i> )
	<i>torulosa torulosa</i>
	<i>Epioblasma</i> (= <i>Dysnomia</i> )
	<i>turgidula</i>
	<i>Epioblasma</i> (= <i>Dysnomia</i> )
	<i>walkeri</i>
	<i>Fusconaia cuneolus</i>
	<i>Fusconaia edgariana</i>
	<i>Lampsilis higginsii</i>
	<i>Lampsilis orbiculata</i>
	<i>orbiculata</i>
	<i>Lampsilis satura</i>
	<i>Lampsilis virescens</i>
	<i>Plethobasis cicatricosus</i>
	<i>Plethobasis cooperianus</i>
	<i>Pleurobema plenum</i>
	<i>Potamilus</i> (= <i>Proptera</i> ) <i>capax</i>
	<i>Quadrula intermedia</i>
	<i>Quadrula sparsa</i>
	<i>Toxolasma</i> (= <i>Carunculina</i> )
	<i>cylindrella</i>
	<i>Unio</i> ( <i>Megalonais</i> /?/)
	<i>nickliniana</i>
	<i>Unio</i> ( <i>Lampsiliss</i> /?/)
	<i>tampicoensis tecomatensis</i>
	<i>Villosa</i> (= <i>Micromya</i> ) <i>trabalis</i>

## FLORA

Araceae	<i>Alocasia sanderiana</i>
	<i>Alocasia zebrina</i>
Caryocaraceae	<i>Caryocar costaricense</i>
Caryophyllaceae	<i>Gymnocarpus przewalskii</i>
	<i>Melandrium mongolicum</i>
	<i>Silene mongolica</i>
	<i>Stellaria pulvinata</i>
Cupressaceae	<i>Pilgerodendron uviferum</i>
Cycadaceae	<i>Encephalartos</i> spp.
	<i>Microcycas calocoma</i>
	<i>Stangeria eriopus</i>
Gentianaceae	<i>Prepusa hookeriana</i>
Humiriaceae	<i>Vantanea barbourii</i>
Juglandaceae	<i>Engelhardtia pterocarpa</i>
Leguminosae	<i>Ammopiptanthus mongolicum</i>
	<i>Cynometra hemitomophylla</i>
	<i>Platymiscium pleiostachyum</i>
Liliaceae	<i>Aloe albida</i>
	<i>Aloe pillansii</i>
	<i>Aloe polyphylla</i>
	<i>Aloe thorncroftii</i>
	<i>Aloe vossii</i>
	<i>Aloe vossii</i>
Melastomataceae	<i>Lavoisiera itambana</i>
Meliaceae	<i>Guarea longipetiolata</i>
	<i>Tachigalia versicolor</i>
Moraceae	<i>Batocarpus costaricense</i>
Orchidaceae	<i>Cattleya jongheana</i>
	<i>Cattleya skinneri</i>
	<i>Cattleya trianae</i>
	<i>Didiciea cunninghamii</i>
	<i>Laelia lobata</i>
	<i>Lycaste virginialis</i> var. <i>alba</i>
	<i>Peristeria elata</i>
Pinaceae	<i>Abies guatemalensis</i>
	<i>Abies nebrodensis</i>
Podocarpaceae	<i>Podocarpus costalis</i>
	<i>Podocarpus parlatorei</i>
Proteaceae	<i>Orothamnus zeyheri</i>
	<i>Protea odorata</i>
Rubiaceae	<i>Balmea stormae</i>
Saxifragaceae (Grossulariaceae)	<i>Ribes sardoum</i>
Taxaceae	<i>Fitzroya cupressoides</i>
Ulmaceae	<i>Celtis aetnensis</i>
Welwitschiaceae	<i>Welwitschia bainesii</i>
Zingiberaceae	<i>Hedychium philippinense</i>

## APPENDIX II TO CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

### Interpretation:

1. Species included in this Appendix are referred to:
  - (a) by the name of the species; or
  - (b) as being all of the species included in a higher taxon or designated part thereof.
2. The abbreviation "spp." is used to denote all the species of a higher taxon.
3. Other references to taxa higher than species are for the purposes of information or classification only.
4. An asterisk (\*) placed against the name of a species or higher taxon indicates that one or more geographically separate populations, sub-species or species of that taxon are included in Appendix I and that these populations, sub-species or species are excluded from Appendix II.
5. The symbol (#) followed by a number placed against the name of a species or higher taxon designates parts or derivatives which are specified in relation thereto for the purposes of the present Convention as follows:
  - #1 designates root
  - #2 designates timber
  - #3 designates timber
6. The symbol (—) followed by a number placed against the name of a species or higher taxon indicates the exclusion from that species or taxon of designated geographically separate populations, sub-species, species or groups of species as follows:
  - 101 Species which are not succulents
7. The symbol (+) followed by a number placed against the name of a species or higher taxon denotes that only designated geographically separate populations, sub-species or species of that species or taxon are included in this Appendix as follows:
  - +201 All North American sub-species
  - +202 New Zealand species
  - +203 All species of the family in the Americas
  - +204 Australian population.

### FAUNA

#### MAMMALIA

#### Marsupialia:

##### Macropodidae

*Dendrolagus inustus*

*Dendrolagus ursinus*

#### Insectivora:

##### Erinaceidae

*Erinaceus frontalis*

## MAMMALIA—continued

Primates:	
Lemuridae	<i>Lemur catta</i> *
Lorisidae	<i>Nycticebus coucang</i>
	<i>Loris tardigradus</i>
Cebidae	<i>Cebus capucinus</i>
Cercopithecidae	<i>Macaca sylvanus</i>
	<i>Colobus badius gordonorum</i>
	<i>Colobus verus</i>
	<i>Rhinopithecus roxellanae</i>
	<i>Presbytis johnii</i>
	<i>Pan paniscus</i>
	<i>Pan troglodytes</i>
Pongidae	
Edentata:	
Myrmecophagidae	<i>Myrmecophaga tridactyla</i>
	<i>Tamandua tetradactyla</i>
	<i>chapadensis</i>
	<i>Bradypus boliviensis</i>
Bradypodidae	
Pholidota:	
Manidae	<i>Manis crassicaudata</i>
	<i>Manis pentadactyla</i>
	<i>Manis javanica</i>
Lagomorpha:	
Leporidae	<i>Nesolagus netscheri</i>
Rodentia:	
Heteromyidae	<i>Dipodomys phillipsii phillipsii</i>
Sciuridae	<i>Ratufa</i> spp.
	<i>Lariscus hosei</i>
	<i>Castor canadensis frondator</i>
	<i>Castor canadensis repentinus</i>
	<i>Ondatra zibethicus bernardi</i>
Castoridae	
Cricetidae	
Carnivora:	
Canidae	<i>Canis lupus pallipes</i>
	<i>Canis lupus irremotus</i>
	<i>Canis lupus crassodon</i>
	<i>Chrysocyon brachyurus</i>
	<i>Cuon alpinus</i>
	<i>Ursus (Thalarchos) maritimus</i>
	<i>Ursus arctos</i> * +201
	<i>Helarctos malayanus</i>
	<i>Ailurus fulgens</i>
	<i>Martes americana atrata</i>
	<i>Prionodon linsang</i>
	<i>Cynogale bennetti</i>
	<i>Helogale derbyanus</i>
	<i>Felis u-gourouundi</i> *
	<i>Felis colocolo pajeros</i>
	<i>Felis colocolo cresnoi</i>
	<i>Felis colocolo budini</i>
	<i>Felis concolor missoulensis</i>
	<i>Felis concolor mayensis</i>
	<i>Felis concolor azteca</i>
	<i>Felis serval</i>
Felidae	

## MAMMALIA—continued

## Carnivora—Continued

## Felidae—Continued

*Felis lynx isabellina*  
*Felis wiedii*\*  
*Felis pardalis*\*  
*Felis tigrina*\*  
*Felis* (= *Caracal*) *caracal*  
*Panthera leo persica*  
*Panthera tigris altaica*  
 (= *amurensis*)

Pinnipedia:  
Otariidae

*Arctocephalus australis*  
*Arctocephalus galapagoensis*  
*Arctocephalus philippii*  
*Arctocephalus townsendi*  
*Mirounga australis*  
*Mirounga leonina*

## Phocidae

Tubulidentata:  
Orycteropidae

*Orycteropus afer*

## Sirenia:

Dugongidae  
Trichechidae

*Dugong dugon*\* + 204  
*Trichechus senegalensis*

## Perissodactyla:

Equidae  
Tapiridae  
Rhinocerotidae

*Equus hemionus*\*  
*Tapirus terrestris*  
*Diceros bicornis*

## Artiodactyla:

Hippopotamidae  
Cervidae

*Choeropsis liberiensis*  
*Cervus elaphus bactrianus*  
*Pudu mephistophiles*  
*Antilocapra americana mexicana*  
*Cephalophus monticola*  
*Ovis (tao) dammah*  
*Addax nasomaculatus*  
*Pantholops hodgsoni*  
*Capra falconeri*\*  
*Ovis ammon*\*  
*Ovis canadensis*

Antilocapridae  
Bovidae

## AVES

## Sphenisciformes:

## Spheniscidae

*Spheniscus demersus*

## Rheiformes:

## Rheidae

*Rhea americana albescens*  
*Pterocnemia pennata pennata*  
*Pterocnemia pennata garleppi*

## Tinamiformes:

## Tinamidae

*Rhynchotus rufescens rufescens*  
*Rhynchotus rufescens pallescens*  
*Rhynchotus rufescens*  
*maculicollis*

## AVES—continued

Ciconiiformes:	
Ciconiidae	<i>Ciconia nigra</i>
Threskiornithidae	<i>Geronticus calvus</i>
	<i>Platalea leucorodia</i>
Phoenicopteridae	<i>Phoenicopterus ruber chilensis</i>
	<i>Phoenicoparrus andinus</i>
	<i>Phoenicoparrus jamesi</i>
Pelecaniformes:	
Pelecanidae	<i>Pelecanus crispus</i>
Anseriformes:	
Anatidae	<i>Anas aucklandica aucklandica</i>
	<i>Anas aucklandica chlorotis</i>
	<i>Anas bernieri</i>
	<i>Dendrocygna arborea</i>
	<i>Sarkidiornis melanotos</i>
	<i>Anser albifrons gambelli</i>
	<i>Cygnus bewickii jankowskii</i>
	<i>Cygnus melancoryphus</i>
	<i>Coscoroba coscoroba</i>
	<i>Branta ruficollis</i>
Falconiformes:	
Accipitridae	<i>Gypaetus barbatus meridionalis</i>
	<i>Aquila chrysaetos</i>
	Spp.*
Falconidae	
Galliformes:	
Megapodiidae	<i>Megapodius freycinet</i>
	<i>nicobariensis</i>
	<i>Megapodius freycinet abbotti</i>
	<i>Tympanuchus cupido pinnatus</i>
	<i>Francolinus ochropectus</i>
	<i>Francolinus swierstrai</i>
	<i>Catreus wallichii</i>
	<i>Polyplectron malacense</i>
	<i>Polyplectron germaini</i>
	<i>Polyplectron bicalcaratum</i>
	<i>Gallus sonneratii</i>
	<i>Argusianus argus</i>
	<i>Ithaginus cruentus</i>
	<i>Cyrtonyx montezumae</i>
	<i>montezumae</i>
	<i>Cyrtonyx monezumae mearnsi</i>
Gruiformes:	
Gruidae	<i>Balearica regulorum</i>
	<i>Gruus canadensis pratensis</i>
Rallidae	<i>Gallirallus australis hectori</i>
Otididae	<i>Chlamydotis undulata</i>
	<i>Choriotis nigriceps</i>
	<i>Otis tarda</i>
Charadriiformes:	
Scolopacidae	<i>Numenius tenuirostris</i>
	<i>Numenius minutus</i>
Laridae	<i>Larus brunneicephalus</i>

## AVES—continued

Columbiformes:  
Columbidae

*Gallicolumba luzonica*  
*Goura cristata*  
*Goura scheepmakeri*  
*Goura victoria*  
*Caloenas nicobarica pelewensis*

Psittaciformes:  
Psittacidae

*Coracopsis nigra barklyi*  
*Prosopeia personata*  
*Eunymphicus cornutus*  
*Cyanoramphus unicolor*  
*Cyanoramphus novaezelandiae*  
*Cyanoramphus malherbi*  
*Poicephalus robustus*  
*Tanygnathus luzoniensis*  
*Probosciger aterrimus*

Cuculiformes:  
Musophagidae

*Turaco corythaix*  
*Gallirex porphyreolophus*

Strigiformes:  
Strigidae

*Otus nudipes newtoni*

Coraciiformes:  
Bucerotidae

*Buceros rhinoceros rhinoceros*  
*Buceros bicornis*  
*Buceros hydrocorax hydrocorax*  
*Aceros narcondami*

Piciformes:  
Picidae

*Picus squamatus flavirostris*

Passeriformes:  
Cotingidae

*Rupicola rupicola*  
*Rupicola peruviana*  
*Pitta brachyura nympha*  
*Pseudochelidon sirintarae*  
 Spp.

## Pittidae

*Muscicapa ruecki*  
*Spinus yarrellii*

## Hirundinidae

## Paradisaeidae

## Muscicapidae

## Fringillidae

## AMPHIBIA

## Urodela:

## Ambystomidae

*Ambystoma mexicanum*  
*Ambystoma dumerillii*  
*Ambystoma lermaensis*

## Salientia:

## Bufonidae

*Bufo retiformis*

## REPTILIA

Crocodylia:  
Alligatoridae

*Orodorylus johnsoni*

Testudinata:  
Emydidae  
Testudinidae

Cheloniidae

Dermochelidae  
Pelomedusidae

Lacertilia:

Teiidae  
Iguanidae

Helodermatidae

Varanidae

Serpentes:

Boidae

*Caiman crocodilus crocodilus*  
*Caiman crocodilus yacare*  
*Caiman crocodilus fuscus*  
(*chiapasius*)  
*Paleosuchus palperbrosus*  
*Paleosuchus trigonatus*  
Crocodylidae  
*Crocodylus novaeguineae*  
*novaeguineae*  
*Crocodylus porosus*  
*Crocodylus acutus*

*Clemmys muhlenbergi*  
*Chersine* spp.  
*Geochelone* spp.\*  
*Gopherus* spp.  
*Homopus* spp.  
*Kinixys* spp.  
*Malacochersus* spp.  
*Pyxis* spp.  
*Testudo* spp.\*  
*Caretta caretta*  
*Chelonia mydas*  
*Chelonia depressa*  
*Eretmochelys imbricata bissa*  
*Lepidochelys olivacea*  
*Dermochelys coriacea*  
*Podocnemis* spp.

*Cnemidophorus hyperythrus*  
*Conolophus pallidus*  
*Cololophus subcristatus*  
*Amblyrhynchus cristatus*  
*Phrynosoma coronatum blainvillei*

*Heloderma suspectum*  
*Heloderma horridum*  
*Varanus* spp.\*

*Epicrates cenchris cenchris*  
*Eunectes notaeus*  
*Constrictor constrictor*  
*Python* spp.\*

## REPTILIA—continued

Serpentes—Continued  
Colubridae

*Cyclagras gigas*  
*Pseudoboa cloelia*  
*Elachistodon westermanni*  
*Thamnophis elegans hammondi*

## PISCES

Acipenseriformes:  
Acipenseridae

*Acipenser fulvescens*  
*Acipenser sturio*

Osteoglossiformes:  
Osteoglossidae

*Arapaima gigas*

Salmoniformes:  
Salmonidae

*Stenodus leucichthys leucichthys*  
*Salmo chrysogaster*

Cypriniformes:  
Cyprinidae

*Plagopterus argentissimus*  
*Ptychocheilus lucius*

Atheriniformes:  
Cyprinodontidae

*Cynolebias constanciae*  
*Cynolebias marmoratus*  
*Cynolebias minimus*  
*Cynolebias opalescens*  
*Cynolebias splendens*  
*Xiphophorus couchianus*

Poeciliidae  
Coelacanthiformes:  
Coelacanthidae  
Ceratodiformes:  
Ceratodidae

*Latimeria chalumnae*  
*Neoceratodus forsteri*

## MOLLUSCA

Naiadoida:  
Unionidae

*Cyprogenia aberti*  
*Epioblasma* (= *Dysnomia*)  
*torulosa rangiana*  
*Fusconaia subrotunda*  
*Lampsilis brevicula*  
*Lexingtonia dolabelloides*  
*Pleorobema clava*

Stylommatophora:  
Camaenidae

*Papustyla* (= *Papuina*)  
*pulcherrima*  
*Paraphanta* spp. + 202

Paraphantidae  
Prosobranchia:  
Hydrobiidae

*Coahuilix hubbsi*  
*Cochliopina milleri*  
*Durangonella coahuilae*  
*Mexipyrigus carranzae*  
*Mexipyrigus churinceanus*  
*Mexipyrigus escobedae*  
*Mexipyrigus lugoi*  
*Mexipyrigus mojarralis*

## MOLLUSCA—continued

## Prosobranchia—Continued

## Hydrobiidae

*Mexipyrus multilineatus*  
*Mexithauma quadripaludium*  
*Nymphophilus minckleyi*  
*Paludiscala caramba*

## INSECTA

Lepidoptera :  
Papilionidae

*Parnassius apollo apollo*

## FLORA

Apocynaceae  
Araliaceae  
Araucariaceae  
Cactaceae

*Pachypodium* spp.  
*Panax quinquefolium* #1  
*Araucaria araucana* #2  
 Cactaceae spp. + 203  
*Rhipsalis* spp.  
*Saussurea lappa* #1  
*Cyathea (Hemitella) capensis* #3  
*Cyathea dredgei* #3  
*Cyathea mexicana* #3  
*Cyathea (Alsophila) salvinii* #3

Dioscoreaceae  
Euphorbiaceae  
Fagaceae  
Leguminosae  
Liliaceae  
Meliaceae  
Orchidaceae  
Palmae

*Dioscorea deltoidea* #1  
*Euphorbia* spp. — 101  
*Quercus copeyensis* #2  
*Thermopsis mongolica*  
*Aloe* spp.\*  
*Swietenia humilis* #2  
 Spp.\*  
*Arenga ipot*  
*Phoenix hanceana* var.  
*philippinensis*  
*Zalacca clemensiana*  
*Anacampseros* spp.  
*Cyclamen* spp.  
*Solanum sylvestris*  
*Basiloxylon excelsum* #2  
*Caryopteris mongolica*  
*Guaiacum sanctum* #2

Portulacaceae  
Primulaceae  
Solanaceae  
Sterculiaceae  
Verbenaceae  
Zygophyllaceae

# APPENDIX IV TO CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

EXPORT PERMIT NO. \_\_\_\_\_

*Exporting Country:* \_\_\_\_\_*Valid Until:* \_\_\_\_\_ (Date)

This permit is issued to: \_\_\_\_\_  
address: \_\_\_\_\_  
who declares that he is aware of the provisions of the Convention, for  
the purpose of exporting: \_\_\_\_\_

(specimen(s), or part(s) or derivative(s) of specimen(s))<sup>1</sup>

of a species listed in

Appendix I }  
Appendix II }  
Appendix III of the Convention as specified below. }<sup>2</sup>

(bred in captivity or cultivated in \_\_\_\_\_)<sup>2</sup>

This (these) specimen(s) is (are) consigned to: \_\_\_\_\_  
address: \_\_\_\_\_ country: \_\_\_\_\_

at \_\_\_\_\_ on \_\_\_\_\_

(signature of the applicant for the permit)

at \_\_\_\_\_ on \_\_\_\_\_

(stamp and signature of the Management  
Authority issuing the export permit)

*Description of the specimen(s) or part(s) or derivative(s) of specimen(s),  
including any mark(s) affixed*

Species (scientific and common name)	Living specimens				Parts or derivatives		
	Number	Sex	Size (or volume)	Mark (if any)	Quantity	Type of goods	Mark (if any)

Note: Stamps of the authorities inspecting:

(a) On exportation.

(b) On importation. (This stamp voids this permit for further trade purposes, and this permit shall be surrendered to the Management Authority.)

<sup>1</sup> Indicate the type of product.  
<sup>2</sup> Delete if not applicable.

## STATEMENT OF CENTER FOR CONCERN IN SUPPORT OF LAW OF THE SEA RESOLUTION

The Center of Concern is an independent public interest group in Washington, D.C., that aims to promote the social justice dimensions of relationships between the United States and the developing world. We appreciate the invitation to appear before this Committee to offer these reflections on social justice aspects of the decisions affecting the earth's seabeds.

We are pleased to have affiliated with our testimony today a number of individuals from organizations whose commitment to international cooperation and global justice parallels our own. They identify with this testimony primarily as individuals, and not necessarily representing an organizational position. They are: Fr. Paul Boyle, Conference of Major Superiors of Men; Sr. Carol Costin, Network; Fr. J. F. Donnelly, S.J., Office of Social Ministries, Jesuit Conference; Dr. Albert Fritsch, S.J., Center for Science in the Public Interest; Ms. Joyce V. Hamlin, United Methodist Women's Division; Dr. John G. Healey, American Freedom from Hunger Foundation; Patrick McDermott, Center for the Study of Power and Peace; Sr. Rosalie Murphy, Pastoral Concerns Commission, Leadership Conference of Women Religious; Sr. Margaret Brennan, IHM, Chairperson, Leadership Conference of Women Religious; and Sr. Mary Luke Tobin, Citizen Action Committee, Church Women United.

We consider that the challenges surrounding the preservation and use of the oceans present an unprecedented opportunity for the United States to act in harmony with its own interests as well as in a manner which effectively promotes justice for the developing world. House Resolution 216 supports the general thrust of the United States Draft Seabed Treaty, which we consider to be a good beginning step and a positive move toward a just and equitable international ocean space policy. With reference to the draft Treaty, we will discuss in this testimony several issues that are of particular importance to the developing world. We feel that these issues merit serious consideration by the United States as issues of social justice.

### OCEAN SPACE AND SOCIAL JUSTICE

The untapped resources of the ocean are so abundant and diverse that they will be of the greatest importance to the future of individual men and women as well as of the nations of the world. The focus of interests of the developing and developed nations converge on the usage of three distinct areas of ocean resources: (1) the harvesting of sea life, (2) the production of oil and natural gas, and (3) the extraction of minerals.

Scientific advances in the fishing industry make it possible for fleets from the developed nations to maintain an increasing lucrative trade based on long-distance fishing. At the same time, the living produce of the seas provides protein for more than 1.5 billion people in the developing world, where beef and dairy protein sources are scarce. Offshore oil production accounted for 20% of the world's petroleum production in 1970; this figure is expected to rise to 30-35% in the coming decade. Concurrently, research proceeds in developing techniques for the extraction of copper, nickel, manganese, and cobalt from potato-sized nodules on the floor of the deep sea.

What are the implications of these developments? As pressure rises for the use of the ocean's resources of sea life, oil, and minerals, and further strain is placed on the ocean's interdependent ecosystem, nations could be faced with a "tragedy of the commons" as described by the ecologist Garrett Hardin. Just as our finite land resources have been mined out, farmed out, and wasted away, the oceans could be laid barren in the years to come. Individual nations, looking on the oceans as parcels of sovereign territory rather than as a common "ocean space," will make decisions based on perceived self-interest. Collectively, such decisions will contribute to the destruction of the ocean's potential. Such international selfishness will especially affect the developing nations. These nations—with a current per capita consumption of available resources far below the developed world—are now looking to the oceans as a fresh opportunity to share in the earth's abundance.

It is therefore imperative that the United States and all other developed nations submit their own particular interests in the finite resources of the seas to common goals established through international accords. Other more qualified witnesses will speak in detail to this Committee about the need to preserve the

interdependent ecosystem of the oceans. But in the name of the interdependent ecosystem of humanity, we urge that justice to all men and women demands that the seabeds be treated as a unified ocean-space. This is in accordance with the United Nations' statement declaring the oceans to be the "common heritage of mankind."

#### RESOURCE SHARING

The 1970 "common heritage" declaration by the United Nations contains an even more important principle: "equitable sharing by states in the benefits derived [from the oceans], *taking into particular consideration the interests and needs of the developing countries, whether land-locked or coastal.*" (italics ours) This principle is crucial to the future of the oceans if they are not to be used to maintain or perhaps worsen the tremendous gap between the wealthy and poor nations. The U.S. Draft Treaty emphasizes this principle in its provision for preferential revenue sharing for the developing nations: they will receive the major share of profits from sale of licenses for ocean exploitation.

One reason for this principle of "particular consideration" is the fact of cost for claiming the resources of the sea. It should be remembered that historically the industrialized nations have enjoyed access to the earth's land-based minerals when these were abundant and relatively easy to acquire and hence cheaper. While the ocean's resources are bountiful, they will be much more difficult and costly to extract than were the land-based resources. The developing nations should therefore be given a special break in the division of the riches of the oceans.

Another way of saying this is to emphasize that an "equitable" share for the developing nations in the resources of the oceans requires that they be given more than an "equal" share. To achieve equity in use of resources, the developing world—representing nearly 85% of the world's population but using less than half of its resources—should have *preferential opportunity* to reap the direct benefits of the ocean's fish, fossil fuels, and minerals.

Pope Paul VI outlined this principle in his 1967 social encyclical *On the Development of Peoples*:

To quote St. Ambrose: "You are not making a gift of your possessions to the poor person. You are handing over to him what is his. For what has been given in common for the use of all, you have arrogated to yourself. The world is given to all, and not only to the rich." . . . The right to property must never be exercised to the detriment of the common good. If there should arise a conflict between acquired private rights and primary community exigencies, it is the responsibility of public authorities to look for a solution, with the active participation of individuals and social groups.

A concrete example of the need for the sharing of benefits is shown in the recently released study by the U.S. Department Interior, *Summary Petroleum and Selected Mineral Statistics for 120 Countries. Including Offshore Areas, 1973*. This study shows that should the ocean's oil reserves be divided according to the narrow claims of national sovereignty—based on proximity to coastal territory—the United States, the Soviet Union, Mexico, Libya, and Saudi Arabia will gain a major share of the oil resources. Only seventeen other coastal states have appreciable amounts of oil off their territorial shores. These nations could thus dictate an important segment of the economic lives of less geographically fortunate developing countries.

When the ocean is viewed within reasonable limits as a non-territorial, unified space, and workable provisions are made for the direct sharing of its resources with the developing countries, then the riches of the seas will become a positive force in correcting the inhuman and dangerous imbalance which presently exists between the rich nations and the poor nations.

#### TECHNOLOGY AND OWNERSHIP

A more subtle social justice issue relating to the seabeds concerns technology. We must realize that the present "technology gap" could virtually insure the continuation of the current economic monopoly of the industrialized nations. Viewed as property, technological knowledge operates to exploit the resources and to control the markets of the world. Although this knowledge is an outgrowth of the cultural, scientific, social and economic advances of the age—and thus is a "common heritage" itself—advanced technology is possessed and used by private corporations and individual nations for their own gain. But technological knowledge is not a "private" property: it is a part of the heritage of humanity.

It is not the prerogative of the rich but should be the means for advancement for all nations. As Pope Paul VI emphasized in *On the Development of Peoples*:

Vatican Council II reminded us \* \* \*: "God intended the earth and all that it contains for the use of every human being and people. Thus, as all men follow justice and unite in charity, created goods should abound for them on a reasonable basis." All other rights whatsoever, including those of property and of free commerce, are to be subordinated to this principle. They should not hinder but on the contrary favor its application. It is a grave and urgent social duty to redirect them to their primary finality.

Currently, some thirty companies in the developed world are conducting research into techniques for exploiting the ocean's mineral resources. These companies already possess highly sophisticated technology. The U.S. Draft Treaty provides for an international authority to "issue licenses for seabed mineral exploration and exploitation: \* \* \* supervise the operations of licensees \* \* \*; and initiate proceedings for alleged violations." But if mining companies and other private interests begin exploitation of the seabed resources without these minimal international controls, the developing countries would be systematically excluded from the benefits of this "exclusive" technology. In addition, these companies would commit their national interests to a "flag nation" struggle over the seabeds.

If such exclusion and national struggle should occur, the developing nations would be the real losers. It is thus in the interest of global social justice that the United States should push for an effective international control which would assure the sharing of technological advance.

#### POLITICAL PARTICIPATION

Even more important in this debate than the preservation of the common heritage or the need to give preference to the developing world will be the *openness* of the decision-making process. The oceans are our last frontier, the only haven still substantially unscarred by the dictatorship of narrow national and political interests. The style in which international accords are reached will be both a symbolic and an actual indication of the willingness of the developed world to respect the sovereign rights and pressing needs of the developing countries. Social justice requires that international participation in this debate be creative, inclusive, and sensitive to the global range of economic and cultural needs.

Denis Goulet, author of the perceptive study of development, *The Cruel Choice*, has explained the importance of cultural sensitivity and political participation in the process of development. He describes two commonly held views of development, one a strictly economic framework in which the GNP and per capita income are paramount, and the second a broader vision combining the economic growth needs with simultaneous social change. Goulet however adds a third dimension to the concept of "development": *the quality of the process*. He points out that where the demands for economic and social change preclude careful consideration of the quality of the change—that is, the manner in which it is carried out and its effect in human terms—the results may be disastrous. Hence, international negotiations must carefully include the participation of all members of the international community. Specifically, the needs of the developing nations in the decisions regarding the seabeds should be met with respect and dignity and not with a false charity that "grants" rights which are intrinsically theirs in the first place.

#### SPECIAL CONSIDERATIONS

A particular demand of several developing nations which has been much misunderstood in North America is the South American claim to territorial jurisdiction extending 200 miles from the coast. Along the coastline of the Andean countries, rivers flow from the mountains into the Pacific's Humboldt Current, creating one of the richest areas for fish in all the oceans. Because the fishing industry is so important to the economies of Chile, Peru, and Ecuador, and because their own lands contribute so generously to this wealth, these nations claim a 200-mile territorial limit. They do this in order to protect a highly valuable resource for future generations, and not simply to preserve it for their sole national use.

Moreover, in examining the Latin American claims mention should be made of the fact that while Peru, for example, is the largest fish-exporting nation in the world, her own people have the second lowest protein consumption level in the world. The government of Peru has recently initiated a program that will en-

courage Peruvians to consume the protein-rich fish which is readily available to them.

Clearly, Latin American countries have very special economic and social interests in their fishing rights. In the interests of social justice, these should be protected in any international negotiations over territorial rights and economic jurisdiction.

Another particularly sensitive area for many developing nations will be the future effect of mineral production from the sea. For example, many developing nations rely heavily on exports of copper and manganese. These raw materials provide a major source of income for countries in need of foreign exchange for their development programs. Chile is the world's largest exporter of copper; Angola, Gabon, Ghana, Ivory Coast, Morocco, South Africa, Zaire, Zambia, Brazil, and India account for more than half of the world's manganese production. Several of these nations are among the poorest nations in the world.

But copper and manganese are two minerals which are found in abundance in the deep seabeds. Should new supplies of these minerals be opened through mining the deep seabeds without an effort at international regulation, the economies of several developing countries would be seriously threatened, damaged, and/or destroyed. Without careful international regulation of production and marketing of the resources of the oceans, the lives of millions of people could be adversely affected.

The U.S. Draft Seabed Treaty moves in a positive direction by calling for an international regime with at least half of the represented countries being from the developing nations. This regime would license all deep sea mining operations. But the Treaty does not specifically call for production and marketing controls that would protect the economies of developing nations. In order to promote more equitable treatment of these nations, the Treaty should attend to this point.

#### U.S. TREATY AND THE DEVELOPING NATIONS

At a time when many domestic interests are pressuring the United States away from international cooperation and responsibility to the poor nations, the U.S. Draft Treaty is a hopeful sign. It contains the beginnings of a program of cooperation and respect between the developed and developing worlds. Significantly, the Treaty recognizes the oceans as belonging to all men and women, and calls for international preservation and protection of this immensely rich resource. In addition, the Treaty recognizes the right of the developing nations to have a major portion of revenues from license fees.

We would urge, however, that in the course of subsequent negotiations and discussions during the United Nations Law of the Sea Conference, the United States delegation should respond to the call of the developing nations for promotion of a *broader* kind of sharing: the distribution of profits from actual production and the sharing of technological skills. The sharing might be achieved through the international regime itself, through joint ventures with developing nations, or through multi-lateral accords.

Another very important point deserves attention. The Treaty specifies that of the twenty-four members on the Council of the international regime, twelve should be developing nations and six should be the most industrialized nations. While we appreciate that representation is assured at least twelve of the developing nations, we would urge that the United States support more flexibility in choosing the other twelve countries. The pressure of negotiating with the six most developed nations—on whom many developing countries depend for trade markets as well as development assistance—might deter free and open negotiation. This would be particularly true where the special needs of the developing nations are concerned.

#### CONCLUSION: A POSITIVE OPPORTUNITY

The United States is at the present time in a particularly good position to exercise leadership in the search for more global social justice. House Resolution 216 supports a positive step in that direction, the Draft Seabed Treaty of August, 1970. By paying attention to the needs and hopes of the developing countries through serious consideration of the social justice issues, the United States has the opportunity to promote a seabed policy of significant merit.

In closing, we would echo the words of Bishop John J. Dougherty as he urged the cause of international justice before the platform committees of the Democratic and Republican parties in 1972. "We submit that this proposed Seabed Treaty warrants serious promotion by the United States, and efforts of various interests, including Americans, to pass national legislation which circumvents its measures should be vigorously resisted."

## STATEMENT OF MARGARET L. GERSTLÉ, U.S. COMMITTEE FOR THE OCEANS, IN SUPPORT OF LAW OF THE SEA RESOLUTION

Next November or December, after more than five years of preparation in a committee of the UN General Assembly, the first comprehensive international law of the sea conference in fifteen years will be convened. Preparatory meetings for the conference are now being held in New York. The resolutions now before the Senate and House restate policy objectives for a future legal regime of the oceans that have been advocated by both Democratic and Republican Administrations. The resolutions are intended to encourage our delegation to the conference and its preparatory sessions to work for an early and comprehensive agreement that can govern the vast changes now taking place in man's use of the oceans.

Why is such a new regime for the oceans so imperative? Essentially it is because in the historically brief time span of little over a decade, man's use of the seas have changed and are changing radically. And the United States, with a multiplicity of important interests in the oceans, both economic and maritime, and in the protection of our marine environment, has a greater stake than most in a regime of law which can create order out of the burgeoning chaos of conflicting uses and claims to man's last and greatest frontier.

The principal body of existing law of the sea is that which has been devised and accepted over the centuries to govern man's ancient and primary use of his ocean environment: as a route of passage for ships and goods, and people, and to a lesser extent as a source of food from fish. It is of course essential to the United States, as a major maritime power, that to a maximum extent consistent with international rules of safety, pollution and other desirable uniform regulation, the so-called "freedom of the seas" be preserved for all. The extension of more than a hundred national land frontiers into the world's oceans can only subject to multitudinous conflicts a world frontier which is essentially common to all coastal states and cover 70% of the planet. Yet such claims are occurring, as nations with little interest in commercial or naval passage about the globe, and great hopes for riches from the ocean's resources, seek to protect any possible benefits through extensions of territorial sea claims up to 200 miles or more.

Agreement on the need for a new law of the sea conference recognizes that in some degree the traditional maritime uses of the oceans, and the new economic uses which include existing offshore oil drilling, the imminent mining of manganese nodules, and new, or relatively new, factory ships which have revolutionized the fishing industry, are often in conflict.

It has been argued by some that it would be desirable for the U.S., or any other state, to claim sovereign rights to coastal seas and all their resources out to 200 or 500 miles or as far as fancy or resources might stretch and power protect. But, what then of the principles of freedom of the seas for the passage of our vital commerce or the U.S. naval fleet? And what then of freedom of overflight which is an adjunct of freedom of the seas, and subject to the control of the coastal state over territorial waters? What would be the price of widening still further the gap between the rich and the poor, as the technically capable and powerful appropriate vast ocean resources, depriving the embittered developing nations of a share in the resources which are the common heritage of our planet? What then of the conflict and chaos of such an "ocean colonial period", which could result only in conflict and chaos instead of the order, restraint, and accommodation which would result from clear ocean law and an effective International Seabed Authority? Clearly extensive territorial claims are inconsistent with the flexible and multiple uses of the oceans that now exist and will increase in the future. Both the interests of the international community and those of the coastal state can be accommodated in an agreed regime based upon reciprocal rights and duties.

Recognition of preferential rights of a coastal state, whether they be to fishery resources, or to the mineral resources of the seabed to an agreed distance from the coast can be accomplished without the sovereign political claims of an age long past and without exclusion of the rights of all nations to share in some fashion in this common heritage of mankind . . . in the need to preserve it . . . and the right to share its benefits.

Since discussions on this subject were begun both in the U.S. and within the international community some six or seven years ago, we have been increasingly warned by scientists, explorers, and students of the seas of the growing hazard to the ocean environment. The oceans are the source of all life on earth; the destruction of their natural state now predicted by some of the more apocalyptic of our scientists would in truth end life on earth. This is a condition no one state can control . . . nor can power protect against the consequence of marine accident.

In sum, man is moving at a great pace, and with limited knowledge, into a new world, great with promise for economic betterment, and fraught with the dangers of our still limited knowledge of the seas. It is a journey we must take together, and carefully.

The resolutions now before the Congress endorse the objectives that were envisioned in the President's statement of Ocean policy of May 23, 1970, a statement which was the culmination of extensive consultations throughout the government, and with interested private parties over a period of years, during both the Nixon and Johnson administrations. Those objectives envision:

(a) a limited 12 mile territorial sea, transit through international straits and the preservation of freedom of the high seas so that the ships of all nations may freely use the oceans, respecting the rights of others, but not subject to the passing political whims of a hundred coastal states.

(b) recognition that the protection of the ocean environment and the accommodation of a variety of uses requires certain internationally agreed rights of the international community as a whole; to protection from pollution, to some share in whatever economic wealth the oceans beds may yield and to the protection of the investment required to produce such benefits; provision for other \* \* \* perhaps yet unforeseen \* \* \* reasonable uses of the oceans; and certainly, a common and compulsory system of dispute settlement so that these common rights are not subject to unilateral amendment and interpretation.

The United States has made suggestions and proposals to accommodate both the interests of the coastal state in its offshore resources and the interest of the international community in our common heritage. We have proposed an area of preferential mineral rights in an area of the seabed beyond the territorial sea but an area in which international community rules would be applied and enforced, and the right to a share of revenues recognized. We have proposed an international authority beyond such an area to regulate the orderly development of the minerals of the deep seabed; and we have made several proposals with respect to the readjustment of coastal state fishing rights.

This is a difficult negotiation. It is difficult because there are few common degrees of interest, except in the ultimate survival of our oceans, and in the expectation of future benefits. Only great powers are concerned with submarines. While many states have extensive continental shelves, their oil potential is arbitrarily clustered and scattered about the globe, as are the known sources of manganese nodules. Some states are economically dependent on their fishing industry. Our planet as we know, is not fairly constructed in the distribution of its wealth in the sea any more than in the land. The United States is fortunate to enjoy both.

The negotiation is also difficult because rules of the sea appear so remote from the interests and therefore the attention and support of most people. And yet from the perspective of decades hence such agreement may be the most important step the world may take \* \* \* if it will \* \* \* toward the governance of those now emerging global problems and opportunities which by their nature are not amenable to unilateral solution. In this sense the law of the sea negotiation is a bellwether for the future.

So let us support our delegation in the degree to which the importance of their task dictates. The broad and bipartisan interest that would be expressed in the passage of these resolutions would constitute, we think, a most important expression of such support. We believe that the intent of House Resolution 216 and of Senate Resolution 82 is identical. We suggest that in section (1), the clearer wording of Senate Resolution 28 be used. With that slight change, we strongly support the passage of House Resolution 216.

## STATEMENT OF ROBERT CORY, VICE CHAIRMAN, COUNCIL OF WASHINGTON REPRESENTATIVES ON THE UNITED NATIONS, IN SUPPORT OF LAW OF THE SEA RESOLUTION

Mr. Chairman, I am joined in this testimony by the Board of Church and Society of the United Methodist Church, by the Friends Committee on National Legislation, and by World Federalists, U.S.A.

Other testimony presented to you deals with the relation of environment, justice and equity for developing nations, and maritime considerations relating to this resolution. I will emphasize its meaning for peace and world order.

This resolution recognizes the importance of the coming Law of the Sea Conference. The old law of the sea, with coastal state control of the three mile wide territorial sea and freedom of the seas beyond, has broken down in a welter of national claims. These claims are given urgency by new interests; by desire to exploit great mineral wealth, by use of modern equipment to make large fish catches, and by greatly increased commercial and defense interests. The threat of pollution hangs over the uncontrolled pursuit of these interests. The present lack of common recognition of national or international rights and responsibilities cannot long continue without great danger, both to man and to the oceans.

The forthcoming Law of the Sea Conference may well be the most important worldwide conference ever held. Both the United Nations and the United States have recognized the need for clear and just law for the sea as "the common heritage of mankind".

There is, therefore, a basis for hope. This point in history may be compared with the early seventeenth century, when colonial rule of the Western Hemisphere and of large parts of Africa and Asia was just beginning. War and conflict, ruthless treatment of weaker peoples, and damage to natural environment followed. Similarly, new technology now allows the technically advanced and powerful to carve up the relatively unspoiled seas in a new "ocean colonial period" of war, conflict, injustice, and pollution. Now, the damage might even be more serious.

Mankind is fortunate indeed that there is still time and opportunity to shape a better future for the oceans:—a future of peaceful, just, and orderly development for the benefit of all mankind, along with full protection of ocean life and environment.

Since peace is more than absence of war, and requires the presence of justice and goodwill. United States policy, endorsed by this resolution, calls for substantial sharing of seabed revenues, particularly for the benefit of developing countries. It also calls for "orderly and just development of the mineral resources of the deep seabed as the common heritage of mankind, protecting the interests of both developing and developed countries". These are strong foundations for ocean justice, and therefore for ocean and general peace.

Peace requires clear cut, recognized, rights, which do not now exist for the oceans. Boundaries between national and international waters and the limits to rights of coastal nations to seabed minerals, fishing, and pollution control, are not agreed upon. This makes conflicts inevitable. These are now occurring, particularly over fishing rights. Would peace be likely in a community if property lines, and even property ownership, were not clearly established?

Peace requires effective institutions, representing the wider community, for protection of recognized rights, especially of the weak against the stronger and more ruthless, for bringing about necessary changes peacefully, and for peaceful settlement of disputes. Such effective international institutions are now lacking for the oceans.

Peace also involves the achievement of security through constant search for, and building of more effective bonds of international trust and cooperation. Mankind needs more experience and experimentation with international institutions, to meet the challenges presented by an increasingly complex and dangerous world. The establishment of an International Seabed Authority to help protect the common heritage of the oceans will give needed experience and knowledge.

Achievement of clearly recognized community rights, of an effective international Seabed Authority, as envisioned by House Resolution 216, will establish wise and workable world law over about 65% of the world's surface covered by waters over 200 meters deep. This will indeed be a major step toward world order.

*First*, the proposed International Seabed Authority avoids features that weaken some other international organizations. It will have its own revenue from license and rental fees, and thus will not be dependent on grants by nations. Its Council will not be hampered by veto or one nation-one vote. It will have the power of peaceful enforcement through its own tribunal, fines, and (in extreme cases) withdrawal of licenses. It will *not* be dependent for enforcement on getting nations to carry out sanctions, or war, against nations. In short, it will have an excellent chance to work successfully.

*Second*, the International Seabed Authority will provide new opportunities for cooperation in research, in sharing of information, and in increasing the capabilities of developing nations in ocean science and technology.

In this last half of the 20th century, a new field of knowledge has been opened up—oceanography. As scientists of various nations work together in an atmosphere of international cooperation, they will find answers to problems that transcend national boundaries. The establishment of a regime of law and equity will encourage this growth of knowledge.

*Third*, the International Seabed Authority will channel net seabed income for the benefit of developing countries. This can be a unique opportunity to help redress the imbalance between the industrial and the developing nations. Here the principle of the common heritage will be put into practice. Nations not equipped to utilize the resources of the seas will have a stake in wise and prudent exploitation of the wealth of the oceans.

We think that some ocean revenues should be used to help developing nations acquire and benefit from ocean technology. We also think that the International Seabed Authority itself should be able to explore the international seabed area, and to enter into a few joint ventures for its exploitation. This will bring it knowledge which will be valuable in the management of deep ocean resources.

We think that the International Seabed Authority should have the power to regulate ocean hard mineral production to protect common heritage revenue, and also to prevent undue hardship to developing countries through damage to their land based mineral income.

We think that the International Seabed Authority's income from deep seabed hard minerals should not be restricted to license or small rental fees, but should include substantial royalty payments.

*Fourth*, we emphasize the importance of international standards and regulation to prevent ocean pollution. We do not want to see competition between nations in exploitation of ocean resources at least monetary expense and greatest environmental cost.

We think that developing state fishing for coastal and anadromous species should be protected, and that conservation and protection of ocean life is very important.

*Fifth*, While an autonomous organization, the proposed International Seabed Authority will be a part of the "United Nations Family," its success will greatly strengthen the United Nations, and the whole movement toward effective international organization. It will gain experience, and establish precedents, which, as confidence is built will be applied to such problems as environment and arms control and disarmament.

It is my conviction, and the conviction of those associated with me in this testimony, that this increasing confidence in and use of effective international organizations will enhance the security and welfare of the citizens of the United States as well as of citizens of other countries. Our view is that our nation will not be losing or sacrificing power or advantage. Rather, we affirm that, in putting forward the principles of House Res. 216, endorsing the objectives of the President's Ocean Policy Statement, members of Congress will be making a significant contribution to the peace, prosperity, and moral integrity of our nation. This is a step toward real national security.

INTERIM REPORT, COMMITTEE ON DEEP SEA MINERAL  
RESOURCES, THE AMERICAN BRANCH OF THE IN-  
TERNATIONAL LAW ASSOCIATION, JULY 19, 1968

I. INTRODUCTION

1. *Subject Matter of this Report*

Heightened interest in and concern over the availability of new sources of ocean minerals, both fuel and non-fuel, are common around the globe. It is clear that a serious, and probably prolonged, process of international debate and decision is now in its initial stages and that states are moving to clarify their common interests in ocean resources development. The purpose of this Report of the American Branch Committee on Deep Sea Mineral Resources is to discuss considerations relating to the exploration for, and the exploitation of, mineral resources beneath the world oceans, and to make recommendations concerning the legal framework for such exploration and exploitation.

2. *I.L.A. Action at Helsinki (1966)*

The International Law Association is indebted to the foresight of the Executive of the Netherlands Branch in taking the initiative of establishing a committee to study the legal regime of deep sea mining, whose report at the Helsinki Conference brought to the attention of all the looming importance of this subject. Thereafter, the Executive Council on 12 November 1966 set up a working group on "Deep Sea Mining," with the late Rear Admiral M. W. Mouton (Netherlands) as Chairman, for the study of this subject.\* The American Branch Committee presents this Report in furtherance of that inquiry.

3. *Current Activities*

(1) *United Nations*

On the international level marine science affairs engage the attention of at least 100 different public and private organizations, but most public attention is devoted currently to the events taking place in the United Nations itself, including especially the General Assembly and the Economic and Social Council. The latter in 1966 adopted Resolution 1112 (XL) which requested the Secretary-General:

(a) to make a survey of the present state of knowledge of these resources of the sea, beyond the continental shelf and of the techniques for exploiting these resources . . . ;

(b) as a part of that survey, to attempt to identify those resources now considered to be capable of economic exploitation, especially for the benefit of developing countries;

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\* Admiral Mouton was succeeded by Prof. D. H. N. Johnson, of Great Britain.

(c) to identify any gaps in available knowledge which merit early attention by virtue of their importance to the development of ocean resources, and of the practicality of their early exploitation.

(Pursuant to this request the Secretary-General in early 1968 released two reports dealing with mineral resources and living resources other than fish.) In 1966 the General Assembly also adopted Resolution 2172 (XXI) endorsing the ECOSOC Resolution, requesting a comprehensive survey of activities in marine science and technology around the globe, and further requesting the Secretary-General in cooperation with UNESCO and FAO to formulate proposals for:

(a) Ensuring the most effective arrangements for an expanded programme of international cooperation to assist in a better understanding of the marine environment through science and in the exploitation and development of marine resources, with due regard to the conservation of fish stocks;

(b) Initiating and strengthening marine education and training programmes, bearing in mind the close interrelationship between marine and other sciences; . . .

In implementing this request the Secretary-General appointed a Committee of Experts and his report and proposals are at this writing expected to be released momentarily.

Most recently, in December of 1967, the General Assembly adopted Resolution 2340 (XXII) entitled "Examination of the question of the reservation exclusively for peaceful purposes of the sea-bed and ocean floor, and the sub-soil thereof underlying the high seas beyond the limits of the present national jurisdiction and the uses of their resources in the interest of mankind." The Resolution established an Ad Hoc Committee on the Oceans which was to prepare for the 23rd General Assembly a study which would include:

(a) A survey of the past and present activities of the United Nations, the specialized agencies, the International Atomic Energy Agency and other inter-governmental bodies with regard to the sea-bed and the ocean floor, and of existing international agreements concerning these areas;

(b) An account of the scientific, technical, economic, legal and other aspects of this item;

(c) An indication regarding practical means to promote international co-operation in the exploration, conservation and use of the sea-bed and the ocean floor, and the sub-soil thereof, as contemplated in the title of the item, and of their resources, having regard to the views expressed and the suggestions put forward by Member States during the consideration of this item at the twenty-second session of the General Assembly; . . . .

This Ad Hoc Committee, on which 35 nations are represented, has constituted two working groups. One deals with technical and economic matters, one with legal matters. The plenary Committee and the two working groups have held a number of meetings, but, as of this writing, their reports are not yet available.

(2) *U. S. Government*

The Congress of the United States has devoted several years of increasingly closer study to the requirements of a national effort to harness the resources of the sea to the benefit of the United States and mankind. The culmination of this Congressional activity came with the adoption of the Marine Resources and Engineering Development Act of 1966.

The major significance of the Act lies in the creation of a cabinet-level body, called the National Council on Marine Resources and Engineering Development, charged with the responsibility, *inter alia*, of developing a comprehensive program of marine science activities. Of equal, if not more, importance the Act called for the establishment by Presidential appointment of a Commission on Marine Science, Engineering and Resources which was to "make a comprehensive investigation and study of all aspects of marine science in order to recommend an overall plan for an adequate national oceanographic program that will meet the present and future national needs." The Commission is composed primarily of private citizens; only five of the fifteen members may be from the Federal Government.

In addition to stimulating intensive activities within the many federal agencies involved in marine science affairs, an important effect of the creation of these two bodies has been both to provide a much sharper focus upon marine science affairs in the United States and to establish a means by which new ideas can be generated and important initiatives identified and set in motion. Thus far in its two annual reports the Council has devoted predominant attention to this latter task, in each instance selecting programs deserving priority and designating the lead

federal agency for implementation. The Report of the Commission is formally due in January 1969, and is expected to be available late in 1968.

Among the most important results thus far of the Council's work is the concept of the International Decade of Ocean Exploration (IDOE) which was initially proposed by President Johnson in March 1968. A White Paper on the Decade issued by the Council in May offers the following elaboration:

The Decade is envisioned as a period of intensified collaborative planning, development of national capabilities, and execution of national and international programs of oceanic research and resource exploration. Knowledge of the ocean and its resources is exceedingly limited. Because of the very size, complexity and variability of the marine environment, scientific investigations of vast scope will be necessary if knowledge of this environment is to increase within a reasonably short interval. At the same time excellence, experience, and capabilities in marine science and technology are shared by many nations. Hence, a broad program of ocean exploration can be carried out only through a cooperative effort by many nations. The success of such an endeavor will depend in large measure on the extent to which various nations contribute their particular expertise and capabilities, assume a share of responsibility for the program, develop their manpower and facilities, and disseminate to others the results of scientific discoveries.

### (3) *Bar Association and other groups*

Paralleling this greatly intensified governmental activity are numerous private groups whose activities include technical, economic and legal consideration of marine resources. Among these are the Committee on Oceanography of the Section of International and Comparative Law of the American Bar Association, the Committee on Marine Resources of the Section of Natural Resources Law, and the Standing Committee on Peace and Law through United Nations, of that Association, and the National Petroleum Council's Committee on Petroleum Resources under the Ocean Floor. Each of these has published, or circulated, drafts of important reports.

### (4) *Questions Discussed*

These various events on the international level, and within the United States and in governmental and private bodies within other countries,

set the framework for this present Report of the American Branch Committee. These activities emphasize that there are great deficiencies and gaps in basic knowledge of the marine environment and its resources which must be remedied if wise decisions are to be made. In all international and national considerations and expressions thus far made, overwhelming emphasis is placed upon the need for intensified scientific and technical research and legal analysis.

In light of these considerations the Committee's Report and recommendations deal both with the procedural question of when to attempt revision of the law of the sea and with the two substantive questions now most frequently discussed: (i) the limit of the exclusive jurisdiction of the coastal states with respect to the exploration and exploitation of the natural resources of the sea-bed and sub-soil of submarine areas adjacent to their coasts, pursuant to the principles recognized in the 1958 Convention on the Continental Shelf, and (ii) the choice of regimes best adapted to the development of the natural resources of the deep ocean floor seaward of the areas encompassed by the jurisdiction of the coastal states.

This report does not discuss military and security questions because we assume that the deep sea floor, by common accord, will be regarded as not subject to acquisition of territorial sovereignty, and will be reserved for peaceful purposes.

## II. NEED FOR FURTHER STUDIES AND EXPERIENCE BEFORE CONVENING AN INTERNATIONAL CONFERENCE TO REVISE LAW OF THE SEA RELATING TO MINERAL DEVELOPMENT

After careful review of developments in ocean use, the Committee believes that it is not in the common interest immediately to seek international agreement, by means of an international conference, on the issues of the limit of the continental shelf and of a regime for the deep ocean regions beyond the limit on the rights of coastal states. Rather, the present need is for the careful studies and inquiries required in preparation for negotiation of such agreements as may eventually be required as we gain knowledge of, and experience in, the marine environment. A number of major considerations indicate that to attempt legal regulation for mineral exploitation through a large multilateral conference would probably hamper rather than promote wise use of ocean resources.

These considerations include:

1. There is widespread misunderstanding or lack of knowledge of the extent and distribution of ocean resources and of the conditions required for their productive use;
2. There is resultant inability to identify anticipated legal and political problems with useful precision;
3. Many, if not all, states are unable presently to determine their national interests in the development of ocean mineral resources and associated issues;
4. Provision of an adequate jurisdictional and regulatory framework for management of ocean mineral resources is dependent upon a major international effort at research and exploration in the oceans;
5. Satisfactory accomplishment of a comprehensive program in scientific research and exploration requires an intensive effort on the part of many states over a period of many years.

In sum, these factors strongly urge that states refrain from any immediate action toward convening a new law of the sea conference or toward revision of the Geneva Conventions. It is, however, conceivable that the required majority of states does not or will not similarly weigh these factors and that an international conference on the law of the sea will again be convened in the near future. The Ad Hoc Committee of the United Nations may or may not recommend such a course. It is also quite conceivable that means other than formal treaty revision may appear desirable for clarifying certain problems, particularly concerning the continental shelf.

In either event, it is incumbent upon those concerned with the protection of the common interests of the states to offer their views on the legal areas which will best provide for those common interests.

Accordingly, the remainder of this Report is devoted to the system of law which, in our view, does or should govern the exploration, development, and production of the mineral resources underlying the high seas (for this discussion, the term "high seas" refers to the oceans beyond the territorial sea).

The choice of a legal regime involves two groups of problems:

1. What geographical restrictions, if any, ought to be imposed on the exclusive jurisdiction which the Continental Shelf Convention rec-

ognizes in the coastal nation with respect to the mineral resources in and beneath the adjacent bed of the sea?

2. Seaward of the exclusive jurisdiction of the coastal state, determined by the Convention on the Continental Shelf, is it necessary at this time to establish any formal regime to govern mineral exploration and production? If so, what should be the objectives and structure of such a regime?

### III. CRITERIA FOR OPTIMUM MINERAL DEVELOPMENT

#### 1. *Objectives of mineral legislation*

Our principal concern in this Report is to identify the requirements for bringing into productive use the minerals located beneath the oceans. The mineral deposit which remains undiscovered, or, being discovered, remains undeveloped, is as useless to man as though it did not exist.

The world-wide experience of nations has demonstrated that a successful system of mineral development laws, whether operating on land or under the sea, should have these objectives:

(1) To encourage the discovery and putting to work of the world's minerals at the lowest cost to consumers consistent with a fair return to the investor and with the maximum ultimate recovery of those minerals, having in mind the needs of future generations as well as our own.

(2) To bring about maximum ultimate recovery by encouraging conservation—in the sense of wise use—both of the minerals themselves and of the natural forces, such as reservoir energy, which are required for their production; conversely, to deter the physical waste of the world's mineral estate.

(3) To facilitate access to minerals, on a non-discriminatory basis, by all responsible interests.

(4) To reconcile competing uses of the environment and minimize the adverse effect of mineral operations on that environment.

#### 2. *The essentials which a mineral regime must offer to bring about development*

To accomplish the objectives that we have identified, it is not enough to articulate them in statutes or conventions.

Men must be induced to risk life and treasure to find and win minerals. The business of discovering and producing them is hazardous enough on land. Under sea, it is much more costly and risky, both financially and physically. Capital must be attracted to the deep sea mineral business in competition with other demands upon it, and in competition with safer mineral investments on shore and in shallower waters.

Successful mineral laws offer three general types of inducement to attract capital and talent:

(1) The mineral regime must offer encouragement to look for minerals, that is, to undertake reconnaissance or prospecting in the hope of finding areas promising enough to justify later expenditures on concentrated exploration.

(2) Security of tenure is essential. The enterprise which drills wells or sinks shafts in search of minerals is gambling large sums, with the odds heavily against the finding of a mineral deposit of value justifying the amount of money invested. It requires the exclusive right to occupy a stated area for exploration and the exclusive right to produce minerals discovered in that area, and to do so for an assured period of time—both the area and the time being commensurate with the character of the risk taken and the amount hazarded.

(3) The mineral venture must have a reasonable prospect that, in the event of success, the exactions of the granting authority, in royalties and taxation, will not be so oppressive as to stifle the undertaking or discourage its continuance.

### *3. The application of the foregoing principles to undersea mineral development*

It does not appear to require argument that if the foregoing principles for the protection of the public interest and the recognition of the miner's necessities are essential to a successful mineral regime on land, they must be essential elements of a successful regime undersea, where risks are immensely greater. At sea, the geology is hidden, no outcrops are visible; the expenses in all phases of exploration are much larger; if minerals are discovered, the costs of development, production, lifting, and transportation are enormously increased. The undersea mineral venture is even more capital-intensive than a comparable venture on land, and, if a mineral deposit is found, it must therefore have greater producibility or higher unit value than need be shown by the economically producible onshore deposit.

The problem to be considered here, therefore, can be restated as follows: What kind of undersea mineral regime will best encourage prospecting, guarantee security of tenure, and fairly balance governmental financial exactions with the risks of the enterprise, while bringing about the maximum ultimate recovery of minerals at the lowest ultimate cost to the consumer, and with an acceptable level of dislocation of other uses of the marine environment?

The problem, as indicated earlier, divides itself into two phases: one related to the jurisdiction of the coastal state, the other to the regime (whatever it may be) seaward of the coastal state's area of competence.

#### IV. THE AREA OF COASTAL STATE EXCLUSIVE JURISDICTION

The jurisdiction of coastal states with respect to the natural resources of the sea-bed and sub-soil areas under the high seas is determined by the Geneva Convention on the Continental Shelf. By that instrument the community of nations has decided that the interests of mankind are best served by reserving to coastal states exclusive sovereign rights in the natural resources of the sea-bed and sub-soil of the submarine areas adjacent to their coasts, not only to the 200 meter depth, but beyond that depth "to where the depth of the superjacent water admits of the exploitation of the natural resources." The basis for this recognition of exclusive mineral jurisdiction is twofold: the predominant interest of the coastal state in the bed of the sea adjacent to its shores, and the necessity for certainty as to what law is applicable to that sea-bed. To date, some three-score nations have given recognition to the principles of that Convention, 36 by ratifying it, the others by adopting major provisions of it in domestic legislation or regional agreements. From the wide acceptance of the principles set forth in the Convention, even by states which are not parties, it is clear that they constitute part of customary international law.

However, for reasons seldom made explicit, some find difficulty with the boundary definition in the Convention, particularly in terms of the reach of the exploitability criterion in light of the principle of adjacency. Accordingly, a number of alternatives are now being advanced in various quarters for revising the Continental Shelf Convention in order to place a firm limitation on coastal control. The Committee believes that this assumption of a need to revise the Shelf Convention is unwarranted

in terms of projected technological progress in offshore mineral exploitation. Reasonably interpreted, the Convention definition of the shelf extends, and limits, coastal control to adjacent marine regions of sufficient extent that the outer limit of control will not be reached for a very long time.

As a general rule, the limit of adjacency may reasonably be regarded as coinciding with the foot of the submerged portion of the continental land mass. There is strong support for this view in the drafting history of the Convention,\* although other interpretations have been advanced. From the geological standpoint, this interface at the submerged continental margin is a profound natural boundary. Characterized by a marked change of structure between the continental mass and the crust of the deep ocean basins, it is generally to be found at a depth of from 2,000 to 3,000 meters. As stated recently by the United States representative in the Technical and Economic Working Group of the United Nations Ad Hoc Committee:

"The composition of the continents, including their submerged parts, is basically different from that of the oceanic crust of the deep ocean basins. The boundary between the two is one of the most profound natural interfaces. It is gradational in many places and not easily established by direct observation, but generally occurs near the base of the continental slopes at a depth of about 2500 meters.

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"... The gradational interface between the submerged parts of the continents and the ocean basins naturally fixes the seaward limit of any continental feature, and is from the scientific point of view the conceptual boundary between continental and oceanic seabed resources. It is important to recognize, however, that neither this nor any other geologic or topographic boundary is sufficiently distinct and consistent to serve by itself as the means of defining a precise juridical boundary."

In view of the fact that this feature is thus often difficult to locate from direct observation, it would seem reasonable and convenient to equate it generally, for the time being at least, with the 2,500 meter isobath. This would be in approximate accord with the geological realities.

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\* See Appendix to this Report.

We are advised informally by scientists of the U. S. Geological Survey that about 7.5 percent of the area of the ocean floor is encompassed by the 200 meter isobath. Similarly, about 16 percent of the area of the ocean floor is included within the 2,000 meter contour. While no comparable estimates are available for the 2,500 meter isobath, adjacent to the continents, an estimate has been made for the 3,000 meter isobath (world-wide, not merely adjacent to the continents), and the percentage of the area of the world's ocean basins found to be included by that isobath is about 25 percent. It would appear, therefore, that if coastal state mineral jurisdiction is equated geographically with the submerged continental land mass (the continental margin, including the geological concepts of the continental shelf, the continental slope, and the landward portion of the continental rise), and if this, in turn, is equated provisionally with an average water depth of 2,500 meters, adjacent to the continents, the result is that substantially less than 20 percent of the area of the world's sea-beds is within the exclusive mineral jurisdiction of the coastal states, and more than 80 percent of the total sea-bed area is outside the coastal regime with respect to mineral development.

In particular instances, as where there is a very narrow or ill-defined continental margin, it may be equitable to regard the limit of adjacency as extending beyond this line. In such situations, the adjacency concept gives the coastal state exclusive mineral jurisdiction in an area of deep ocean floor which is reasonable with regard to all relevant circumstances. In general, a reasonable measure of this jurisdiction might well be the average width of the continental margins of the world's oceans, or approximately 100 miles, though there might be situations, as in the case of some of the smaller seas, in which a different standard would be more appropriate.

Special problems may also occur with respect to islands.

On the view proposed above, a sufficiently definite seaward limit for the exclusive jurisdiction of the coastal state may be persuasively derived from the language of the Convention as it now stands. Any doubts or differences can be resolved on an *ad hoc* basis as they arise. Hence there would seem to be at this time no need to consider possible changes in the Convention in anticipation of the time when it becomes open to proposals for revision in June 1969. Likewise, it does not now seem desirable to urge the convening of a new international conference, which might well raise more problems than it would settle.

Nevertheless, in view of current debate over the limit of coastal state jurisdiction under the present Convention, it may be desirable that this

limit be explicitly clarified. Rather than attempt such clarification through an international conference, it would appear preferable to deal with the matter by means of parallel *ex parte* declarations in which the states concerned would voluntarily recognize limits on their exclusive jurisdiction along the lines suggested in this Report. Such declarations might well contain not only an express recognition of the proposed definition of adjacency, but also an affirmation of intent not to recognize more extensive claims by others—e.g., to the middle of the great oceans. By such means it would be possible to build up a pattern of concordant state practices by which the meaning of the existing Convention language may be authoritatively determined.

In connection with the *ex parte* declarations above mentioned, states may also wish to give serious consideration to provision, in accordance with internal law and constitutional procedures, for allocation of a portion of the revenues derived from part of the area of coastal control to an international fund earmarked for expenditure for generally approved international purposes. Different conclusions might be reached by different states depending upon current levels of foreign aid expenditures and policies relating to dedication of revenues derived from specific sources for specific purposes. In the United States, such policy decisions must be made by the Congress.\*

## V. THE DEEP OCEAN FLOOR BEYOND THE AREA OF COASTAL CONTROL

### 1. *The need for a sound beginning*

We turn now to consider the deeper ocean areas, those seaward of the coastal regime established by the Convention on the Continental Shelf. Inasmuch as the coastal regime controls mineral development on the continents, including the submerged continental land mass, and this, generally speaking, extends to depths of the order of 2,500 meters, it seems valid to expect that the opportunities in the areas under coastal control (contrasted with the formidable technical and economic problems attending mineral development beneath deeper water) will occupy the creative and productive energies of scientists and engineers for several decades to come. Mineral developments will move out to very deep

\* Mr. Finlay dissents with respect to this paragraph, saying: "I see no more reason for a nation's allocating a portion of the revenues derived from offshore operations than for allocating a portion of the revenues from onshore operations to international purposes and the very making of the suggestion casts an implied cloud on the title of the coastal states to the mineral resources of their continental margins."

waters only when net costs of exploration and production there will compete favorably with like costs for obtaining those minerals on land or beneath shallower waters, or with the costs of obtaining acceptable substitutes.

The hard minerals most frequently mentioned as deep sea resources are those found in so-called manganese nodules (i.e., manganese, copper, nickel, cobalt). The known onshore deposits of manganese superior to the average grade found in the nodules exceeds 100 years of supply of the world's consumption at present rates. The known onshore deposits of the other components of the nodules is less, in terms of years of consumption, but is still measured in four to ten decades, and these metals are not immune to competition from substitutes—aluminum for copper, for example. This is without reference to the formidable technical problems involved in mining beneath water depths nearly twice as great as that which crushed the submarine "Thresher"; delivering the ore in very large daily tonnages; receiving it on board a floating smelter or beneficiating plant which must operate in the open stormy sea in fixed positions (or lose contact with the submarine hoisting device); and processing it by metallurgical techniques not yet available, but which must be devised if these metals are to be separated from the highly refractory material containing them.

With respect to oil and gas, the geologists believe that the major opportunities lie in the sediments of the continental margin—the areas which are now subject to coastal jurisdiction—and not in the floor of the deep oceans, which is of quite different geologic origin. Aside from this, it is valid to expect that development of petroleum resources beneath the oceans will first take place in the shallower areas, for economic reasons. Experience to date has shown that the outlay for moving out into deeper water has risen almost in geometric proportion, as related to depth. Competition of non-conventional onshore substitutes, such as tar sands, oil shale, and hydrogenation of coal, as well as other energy sources, such as nuclear fission (and, potentially, nuclear fusion) will impose limitations on incentives for petroleum production from the deep ocean floor. For example, it has been estimated by Chairman Seaborg of the United States Atomic Energy Commission that:

"... fusion of the atoms of heavy hydrogen available in the oceans of the world will open up an energy resource equivalent to 500 Pacific oceans filled with high grade petroleum."\*

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\* Dr. Glen T. Seaborg, "The Proliferation of the Peaceful Atom," before the American Public Power Association, May 11, 1967.

This is not to say that the development of the minerals of the deep ocean floor beyond the continental margins will not occur. But the assertion,\* frequently repeated, that some six billion dollars of gross annual income from undersea mineral development could accrue by 1975 to the United Nations or other international agency which might control access to the ocean floor is a wholly unsupported factual assumption, and an unacceptable premise for urgency in devising a regime to govern the deep ocean floor. It is significant that this estimate was based in part on the assumption that the sovereign rights of coastal nations should terminate at the 200 meter isobath, or at 12 miles from the nearest coast. As we have indicated, this would require agreement of the coastal nations to relinquish their exclusive rights in the minerals of the submerged continental land mass seaward of the 200 meter isobath, now recognized in them by the Convention on the Continental Shelf. As coastal nations comprise five-sixths of the membership of the United Nations, this does not seem a viable premise, quite aside from the illusory amount associated with it.

While it thus appears that there is no precipitate necessity for the structuring of a regime to govern the development of the minerals beneath the oceans seaward of the existing mineral jurisdiction of the coastal states, it is appropriate to recognize the necessity for studying and agreeing on a formulation of international legal principles based on existing customary international law which will encourage exploration and protect exploitation of the resources of the deep sea floor.

In the meantime, such initial mining operations as may occur in the deep ocean are unlikely to be the occasion for conflict which cannot be disposed of satisfactorily by available international legal principles and institutions. Deferment of attempted alteration of the regime has also the great virtue, surely to be considered an important objective, of delaying action until the dimensions of the problem are far more clearly apprehended than is presently the case. Experience gained with exploitive operations within the area of coastal control may well furnish us with the guidelines by which problems in the deeper regions beyond may be resolved in accord with the common interests of all.

## *2. Possible regimes or arrangements to control mineral development of the deep ocean floor*

In view, however, of the very long time which will be required, or should be required, for negotiating a new international agreement for

\* Statement of the Ambassador of Malta, H. E. Dr. A. Pardo, United Nations General Assembly, November 1, 1967.

the deep sea-bed (if such agreement is believed to be required), it is appropriate to investigate various alternatives. Three major choices are most frequently suggested.

(1) *The flag nation concept*

One concept is essentially that of *laissez faire*: let the appropriation and development of the minerals of the deep sea-bed continue to be undertaken by any nation willing to risk its treasure and the lives of its nationals to win those minerals.

(2) *Creation of an international licensing mechanism*

At the opposite end of the spectrum is the proposal for establishment of an international licensing authority. This presupposes the creation in some supranational agency of a new competence, not now existing, to grant or refuse reconnaissance permits, exploration licenses, and production concessions just as sovereigns now do within their national jurisdiction on dry land and on the continental shelf. Presumably the new supranational agency would, or could, control or prohibit production, set prices, control repatriation of capital and profits, and fix and collect taxes and royalties, as some sovereigns do. Neither the United Nations nor any other international entity now has competence to exercise such powers. Presumably the nations of the world, collectively, do have that competence, but they have not, singly or collectively, delegated it to the Assembly of the United Nations.

(3) *Registry and code of conduct*

A third and intermediate solution is the ultimate establishment of "norms of international conduct," to be obeyed by every nation whose flag is flown by an exploratory expedition. Coupled with this, the establishment, by international convention, of a central registry system, has been suggested as a refinement of the flag-nation concept. A two-fold concept seems indicated: registry of national claims, and a code of national conduct in the occupation and use of the areas claimed. These concepts find analogies in the existing mineral laws of many countries.

If such arrangements evolved on the pattern of existing national laws, notice would be recorded in an international registry office by the flag nation of the expedition, stating the intended occupation of specified areas, of predetermined permissible size. An exclusive right of occupancy, secured for a known time, would accrue to the recording nation, for the benefit of its licensees, with respect to the published area. The

right would remain exclusive, however, only so long as work continued in conformity with specified criteria. If minerals were found, their production would be governed by the laws of the nation which had registered the original notice of intent. In addition, it has been suggested that the availability of areas for mineral development, under the registry scheme, particularly the requisite distance offshore from adjacent states, would be determined by international convention and not by the registry office. Recognition of previously acquired rights is an essential of the scheme, as is the recognition of competing interests in the use of the marine environment, e.g., for fishing and navigation.

It would be appropriate in the development of a treaty covering these provisions to give consideration to the recommendation advanced by the United States Representative on June 20, 1968, to the Legal Working Group of the U. N. Ad Hoc Committee to Study the Peaceful Uses of the Sea Bed and Ocean Floor Beyond the Limits of National Jurisdiction for the "dedication as feasible and practicable of a portion of the value of the resources recovered from the deep ocean floor to world or regional community purposes."

The algebraic form in which the registry concept is here stated is deliberate. Some of the difficulties, including the problems of competing notices of claims, priorities, areas, duration, work required to keep claims alive, and so on, are self-apparent. No one knows as yet how to put numbers into any of these concepts. No one will know how to do so until after a great deal of deep sea exploration and discovery of minerals has taken place. This exploration, in our view, should be encouraged, not retarded.

While we prefer the intermediate solution (No. 3 above), we decline to characterize the flag nation concept (No. 1 above) as one that invites "anarchy" or "chaos" or "race to grab," as some have contended. This approach is not one characterized by the absence of law. On the contrary, we are of the opinion that under existing law a state has competence to establish limited rights of jurisdiction and control over minerals of the sea-bed by effective use of the area encompassing them. We are of the further opinion that, in the event of conflict between the mineral development projects of two or more nations, there are established principles of international law, now applicable to the high seas, which would be available to resolve such conflicts on an *ad hoc* basis. Nevertheless, we recognize that these existing principles may not provide an adequate basis for long-term development of these resources in an orderly manner. If a comprehensive legislative solution can be

designed in advance for this purpose, that possibility should be carefully explored.

We recommend against any attempt at a solution through the creation of an international licensing mechanism (No. 2 above), in the foreseeable future. To create and define the powers of such a supranational authority would be an enterprise rivaling in magnitude the creation of the United Nations itself. It could not be self-created by resolution of the Assembly. It presupposes that the maritime nations of the world would delegate to a super-sovereign the power to prevent their own exercise of powers, now possessed, to occupy and use the bed of the deep sea beyond national jurisdiction.

There is no reason why use of deep sea mineral resources should be made contingent upon the solution of political problems of such magnitude, or why exploration of the deep ocean floor should be prohibited pending the accomplishment of that solution (as some have suggested). It is enough to say that any scheme which adds costs, delays, and international politics to the formidable obstacles which already confront the would-be explorer of the deep sea-bed bears the burden of proving the necessity for its existence.

## VI. CONCLUSIONS AND RECOMMENDATIONS\*

### 1. *With respect to the gathering of factual information*

Full support should be given to the International Decade of Ocean Exploration, now being formulated, and to the continuance of the maximum international cooperation in the acquisition and exchange of information about the ocean floor.

There should not be any embargo on or prohibition of exploration of deep sea mineral resources pending the negotiation of an international agreement relating thereto. To the contrary, all possible exploration, research, and exchange of knowledge should be encouraged. There is no need to prohibit this desirable progress because of uncertainties as to who shall control production, if minerals are discovered.

### 2. *With respect to the area within the exclusive jurisdiction of the coastal nations over submarine mineral resources*

Since exploration and exploitation of undersea minerals is likely to occur earlier in the shallower waters of the oceans adjacent to the conti-

\* Members of the Committee have exchanged views with members of similar Committees of the American Bar Association, in preparation of these Conclusions and Recommendations.

nents than in the abyssal depths, it follows that if jurisdictional uncertainties arise to impede such operations during the next several decades, such problems will be primarily related to the scope of the mineral jurisdiction which is already vested exclusively in the coastal states by the "exploitability" and "adjacency" criteria of jurisdiction which now appear in the Continental Shelf Convention. This uncertainty, if necessary for its resolution occurs, might be removed by consultation among the major coastal nations which are capable of conducting deep sea mineral development, looking toward the issuance by those states of parallel *ex parte* declarations. These declarations might appropriately restrict claims of exclusive sea-bed mineral jurisdiction, pursuant to the exploitability and adjacency factors of the Continental Shelf Convention, to (i) the submerged portions of the continental land mass, limiting this provisionally to a depth of, say, 2,500 meters, or (ii) to a stated distance (say 100 miles) from the base line, whichever limitation encompasses the larger area.\* Such declarations might appropriately recognize special cases. Two such classifications suggest themselves: (i) In the case of states whose coasts plunge precipitously to the ocean floor (e.g., on the west coast of South America), the suggested 100-mile limit on sea-bed mineral jurisdiction would automatically operate on the deep ocean floor. (ii) In the case of narrow or enclosed seas, the principle of adjacency might appropriately carry coastal mineral jurisdiction to the median lines, even though these are beyond the continental blocks.

This proposal should not necessitate any amendment of the text of the Continental Shelf Convention. That Convention's differentiation between the coastal state's exclusive rights in sea-bed minerals, on the one hand, and, on the other hand, the non-exclusive status of the sea-bed with respect to research and other uses not related to mineral exploitation, would be retained. So also with the Convention's preservation of the high-seas status of the overlying waters.

It would, however, be both appropriate and desirable to reiterate these understandings in the recommended declarations. In the instance of scientific research, which is being increasingly impeded by the requirement of coastal consent for research undertaken on the continental shelf, these parallel declarations might be employed to secure greater protection for this vital activity.

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\* Mr. McCracken, while joining in the report, would prefer not to suggest figures.

3. *With respect to the regime which should be applicable to the minerals in and under the sea-bed, seaward of the limit of the coastal state's exclusive jurisdiction*

(1) We do not consider it admissible under present circumstances to vest jurisdiction in the United Nations or in any other international organization to administer an international licensing system with power to grant or deny exploration and production concessions with respect to undersea minerals.

(2) We think there should be created an international commission (including adequate representation of the maritime powers now engaged in oceanic research and mineral exploration), or vesting responsibility in an existing commission so constituted, with instructions to draft a convention (subject, of course, to ratification) which shall have as its objectives:

a. Creation of an international agency with the limited functions of (i) receiving, recording, and publishing notices by sovereign nations of their intent to occupy and explore stated areas of the sea-bed exclusively for mineral production, notices of actual occupation thereof, notices of discovery, and periodic notices of continuing activity, together with (ii) resolution of conflicts between notices recorded by two or more nations encompassing the same area.

b. Establishment of norms of conduct by sovereign nations with respect to the recording of the notices proposed in the preceding paragraph, and in the occupation of the sea-bed and exploration and production of minerals therefrom. The drafting commission could appropriately recommend for inclusion in the resulting convention, among other things, standards (or a mechanism to establish standards) relating to permissible areas for inclusion in exploration and production phases, periods of exclusive rights of occupancy, requirements of diligence as related to tenure, conservation, avoidance of pollution, accommodation with competing uses of the marine environment, etc. The instructions to the negotiating commission should stipulate that the resulting convention shall contemplate that the actual production and marketing of minerals discovered shall be controlled by the laws of the recording nation, and that that nation shall be held accountable for the conduct of those operating under its flag in the exploration and exploitation of minerals.

c. Establishment of (i) reasonable payments to be made, preferably to the World Bank, by the nation which undertakes mineral development, in areas seaward of coastal mineral jurisdiction, in the nature of development fees or royalties, and (ii) the purposes to which such rev-

enues, when received, shall be applied. These purposes should be restricted to international activities on which wide agreement can be reached, such as oceanic research, programs aimed at improved use of the sea's food resources to alleviate protein malnutrition, and the development of the natural resources of the less developed countries.

Respectfully submitted,

WOODFIN BUTTE  
 LUKE W. FINLAY  
 (Alternate: CARLOS J. ANGULO)  
 WILLIAM L. GRIFFIN  
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 BRUCE HARLOW  
 RALPH JOHNSON  
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 JOHN E. MCCrackEN  
 MYRES McDOUGAL  
 JOSEPH W. MORRIS  
 CECIL J. OLMSTEAD  
 RICHARD YOUNG  
 WILLIAM T. BURKE, *Rapporteur*  
 NORTHCUTT ELY, *Chairman*

(Two members of the Committee, Messrs. Oscar Schachter, Director of Research, UNITAR, and Stanley N. Futterman, Legal Adviser for Special Political Affairs, Department of State, have asked that, because of their official positions, particularly in relationship to the work of the United Nations Ad Hoc Committee, their names not be included as sponsors of this report. The Chairman, nevertheless, wishes to acknowledge, with appreciation, the contributions made to the Committee's discussions by Messrs. Schachter and Futterman, as well as by Prof. Henkin, whose dissenting views are printed herewith.)

*Dissenting Statement by Louis Henkin*

I cannot subscribe to the Committee's report. In my view, its focus is narrow, its concerns parochial, and its proposals short-sighted. The *laissez faire* philosophy which permeates it is a dangerous anachronism. The positions it recommends would lead to a "grab" by the coastal states, especially the highly developed states, of resources which the President of the United States has declared to be "the legacy of all human beings." They would seriously damage other interests of all nations, including the coastal states, and eventually end "the freedom of the seas" in principal parts of the oceans.

I am particularly troubled by the proposed extension of the doctrine of the continental shelf to an area more than three times that originally contemplated. That recommendation is without foundation in the 1958 Convention, either in its language or in its history. It would grab for the coastal states the resources of one-quarter of all the ocean bed, and the area in which the principal mineral resources are believed to lie. Even in its narrow concerns, I believe this recommendation to be mistaken; the implication that it is better for entrepreneurs to deal with national governments without international regulation or intervention is a misreading of recent history and extremely short-sighted.

But the most serious consequences of a magnified continental shelf are not even mentioned. For while the doctrine of the continental shelf formally gives the coastal state sovereignty only for the purpose of exploiting mineral resources, exclusive jurisdiction for one purpose tends to expand to sovereignty for all purposes. The Committee's proposal would mean that, increasingly, one-quarter of the ocean—and in many ways the most important quarter—would tend to become territorial sea. Surely, it would soon be effectively barred to many other uses by other nations, including much navigation, scientific research, and defensive measures at sea that are important to national security and world peace.

*Comments by the Rapporteur and Chairman on  
Professor Henkin's Dissent*

1. As to the jurisdiction of the coastal states: Professor Henkin apparently construes the Convention as though the exploitability criterion were not there; otherwise, his assertion that the submerged portion of the continental land mass encompasses "an area more than three times that originally contemplated" is irrelevant, because this is a comparison of the areas included within the 200 meter and 2,500

meter isobaths. But the exploitability criterion is there; it explicitly takes coastal jurisdiction "beyond that depth" of 200 meters; and if it is not limited to the continental land mass by the criterion of adjacency, as the Committee construes the Convention, then what other limit is to be found in the Convention? Professor Henkin does not tell us. The Committee proposes to limit, not extend, the exclusive coastal jurisdiction. Of course, we decline to limit it to the 200 meter isobath, since the Convention itself says coastal jurisdiction extends "beyond that depth," just as we decline to extend it to the median lines of the oceans, as some have construed the Convention.

2. As to the contention that the Continental Shelf Convention, construed as encompassing the seabed of the continental margin, would tend to expand coastal sovereignty over the superjacent waters: History does not support this assertion. The claims of the Latin American countries to 200-mile wide territorial seas antedate the Convention. The Convention's explicit dissociation of coastal control of the seabed from territorial sovereignty over the superjacent waters has been respected, so far as we know, irrespective of the width of the seabed area under coastal control. The Committee proposes that this be reaffirmed in declarations of coastal states limiting their seabed jurisdiction to the continental margin.

3. As to the deep ocean floor beyond coastal jurisdiction: It is strange to characterize as an "anachronism" the application of the principles of freedom of the sea to the bed of the sea, in order to maintain access to the world's submarine minerals for all mankind without discrimination. These principles have served mankind well for three centuries. It is curious to call "parochial" the Committee's call for international agreement on enlightened standards of national conduct which will assure that this accessibility continues, accompanied by recognition of one another's investments in undersea mineral development, and is not replaced by claims of exclusive territorial sovereignty. It is odd to call "narrow" our proposal that the nations which take the whole risk of developing the minerals of the deep ocean floor seaward of the coastal jurisdictions shall dedicate a portion of their gains, if any, to the welfare of other countries.

WILLIAM T. BURKE  
NORTHCUTT ELY

## APPENDIX

After the preparation of the foregoing Report, a report of the National Petroleum Council, dated July 9, 1968, entitled "Petroleum Resources under the Ocean Floor," became available.

It contains the following Appendix, prepared by Oliver L. Stone, Chairman-Designate of the Committee on Marine Resources of the Section of Natural Resources Law of the American Bar Association. It is reprinted here not as a part of this Report, but as a matter of information, because of its relevance to the interpretation of the Convention on the Continental Shelf.

REVIEW OF BACKGROUND AND NEGOTIATIONS  
LEADING TO EXECUTION OF 1958 GENEVA  
CONVENTION ON THE CONTINENTAL SHELF

The 1958 Geneva Convention on the Continental Shelf encompasses the "continental margin." \*

The Convention, in article 1, defines the term "continental shelf" as follows:

"For the purpose of these articles, the term 'continental shelf' is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands." \*\*

The definition, read in light of its history, may reasonably be interpreted as encompassing the "continental margin." \*\*\*

\* The term "continental margin" is used herein as it is defined in the report to which this appendix is a part.

\*\* The text of the definition and the preparatory work leading to its adoption indicate clearly that the exploitability test was not intended to extend the shelf regime to mid-ocean, but rather was intended to have some limitation to submerged areas reasonably "adjacent" to the coast. Evidence of this is revealed in the International Law Commission's (ILC) Report of its 8th Sess. (U.N. A/3159), pages 76-77, 81-82, hereafter cited as ILC Report; and in Fourth Comm. (Cont. Shelf), Off. Records, Vol. VI, U.N. A/Conf. 13/42, pages 3-4, 8-12, 15, 21, 24, 27, 33-35, 40, 42, 53, 55, and 88-92, hereafter cited as Fourth Comm. Report.

\*\*\* Since the exploitability criterion and the adjacency test potentially permit extension of the shelf regime to the outer edge of the "continental margin," that fact precludes all nations other than the littoral nation from asserting rights to shelf natural resources in this area.

1. *The history of the Convention's definition of the term "continental shelf"*

In the International Law Commission's (ILC) first draft of the definition (1951) the "continental shelf" was defined as covering:

"the seabed and subsoil of the submarine areas contiguous to the coast, but outside the area of territorial waters, where the depth of the superjacent waters admits of the exploitation of the natural resources of the seabed and subsoil."

At its 1953 session, however, ILC changed the definition and defined the shelf solely in terms of water depth, using 200 meters as the outer limit.

At its final session in 1956, the ILC again changed the definition of "continental shelf." This time the shelf was defined in substance as it appears in Article 1 of the Convention, embodying the alternate criteria of water depth (200 meters) and exploitability. The ILC explained its final definition as having been prompted by action taken by the Inter-American Specialized Conference on Conservation of Natural Resources: Continental Shelf and Oceanic Waters, held at Ciudad Trujillo (Dominican Republic) in March 1956. That conference had concluded that "the right of the coastal State should be extended beyond the limit of 200 metres, 'to where the depth of the superjacent waters admits of the exploitation of the natural resources of the seabed and subsoil'." (ILC Report, p. 41.)

In its final report on the definition, ILC makes clear that its definition departs from the strict geological concept of the shelf, stating (ILC Report, pp. 41-42):

"... the Commission therefore in no way holds that the existence of a continental shelf, in the geographical sense as generally understood, is essential for the exercise of the rights of the coastal State as defined in these articles."

And (*id.*):

"Again, exploitation of a submarine area at a depth exceeding 200 metres is not contrary to the present rules, merely because the area is not a continental shelf in the geological sense."

Further light is shed on the definition of the shelf, particularly the phrase "the submarine area adjacent to the coast," by ILC's commentary on its draft Article 68, which provides that the coastal State exercises over the shelf "sovereign rights for the purpose of exploring and exploiting its natural resources." The ILC points out that once

the seabed and the subsoil become an object of active interest to coastal States with a view to exploitation of their resources, "they cannot be considered as *res nullius*, i.e., capable of being appropriated by the first occupier. It is natural that coastal States should resist any such solution." (ILC Report, p. 43.) And then the commentary proceeds (*id.*):

"Neither is it possible to disregard the geographical phenomenon whatever the term—propinquity, contiguity, geographical continuity, appurtenance or identity—used to define the relationship between the submarine areas in question and the adjacent non-submerged land. All these considerations of general utility provide a sufficient basis for the principle of the sovereign rights of the coastal State as now formulated by the Commission. As already stated, that principle, which is based on general principles corresponding to the present needs of the international community, is in no way incompatible with the principle of the freedom of the seas." (Emphasis added.)

Thus, the ILC left no doubt that the "adjacent" areas to which the Convention relates includes the submarine areas having "propinquity, contiguity, geographical continuity, appurtenance or identity" with the continental land mass. The "continental margin" meets all of these criteria, although any one would suffice. It is, therefore, clearly encompassed by the Convention.

Additionally, the Ciudad Trujillo Conference of 1956 is of particular significance in construing the Convention's definition because it was the outcome of this Conference which prompted ILC to incorporate the exploitability test in its final (1956) draft of the definition. The Trujillo Conference (Committee I Report) reported:

1. "The continental shelf is from the point of view of geology, structure and mineralogical characteristics, an integral, although submerged, part of the continents and islands."
2. "There is no uniformity as regards the width, depth, and geological composition of the shelf, even in a single sea."
3. "The shelf is and constitutes a valuable source of natural resources, which should be exploited for the benefit of the coastal state."
4. "The extent of these resources is not known exactly, but it is believed that they bear a relation to the extent of the American shelf. . . ."
5. "Scientifically the term 'continental slope', or 'inclination' refers to the slope from the edge of the shelf to the greatest depths."

6. "Technical progress has been made [in exploiting the resources of the shelf] and there are exploitations at depths of nearly 1000 meters."
7. "The term 'continental terrace' is understood to be that part of the submerged land mass that forms the shelf and the slope."

From the foregoing points the Committee concluded:

"The American States are especially interested in utilizing and conserving the existing natural resources on the American terrace (shelf and slope)." (Words in parentheses appear that way in original.)

And:

"The utilization of the resources of the shelf cannot be technically limited, and for this reason the exploitation of the continental terrace should be included as a possibility in the declaration of rights of the American States."

The Conference \* unanimously adopted a Resolution (Document 95) which reads:

"1. The sea-bed and subsoil of the continental shelf, continental and insular terrace, or other submarine areas, adjacent to the coastal state, outside the area of the territorial sea, and to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the sea-bed and subsoil, appertain exclusively to that state and are subject to its jurisdiction and control."

At the 1958 Geneva Conference on the Law of the Sea, the fourth Committee considered the draft articles on the Continental Shelf. In commenting on the definition, particularly the exploitation test, the spokesman for the United States delegation (Miss Whiteman) observed that (p. 40):

"The definition of the rights of the coastal State to the continental shelf and *continental slope* adjacent to the mainland proposed by the International Law Commission would benefit individual States and the whole of mankind." (Emphasis added.)

This expression of understanding of the definition by the United States made during the course of the debates, together with the fact that the United States had shortly prior thereto joined in the Ciudad Trujillo resolution of March 28, 1956, proclaiming that "the continental shelf, continental and insular terrace" appertain to the coastal nation,

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\* Twenty nations including the United States participated in this Conference.

places it in a uniquely strong position to announce its interpretation that the shelf regime encompasses the "continental margin."

Dr. Garcia-Amador, a delegate to the Ciudad Trujillo Conference, served thereafter as Chairman of ILC during its eighth session at which the definition of "continental shelf" was revised to include the exploitability test along with the 200 meters criterion. His views undoubtedly were significant in bringing about this change. He writes (Garcia-Amador, *The Exploitation and Conservation of the Resources of the Sea* (2nd ed., 1959, at p. 108):

"As we have indicated, the geographical configuration of the bed of the sea contiguous to the coast of continents and islands is sometimes so irregular that it cannot be defined in terms of the shelf or terrace concepts. When this is so, as in the case of some countries in the American continent and elsewhere, the coastal State may exercise the same exclusive rights now enjoyed by those *which have a continental or insular shelf and terrace*, provided the depth of the superjacent waters admit of the exploitation of the natural resources of the seabed and subsoil and that the submarine areas be adjacent to the territory of the coastal State." (Emphasis added.)

And continuing (*id.*, p. 130):

". . . States enjoy present legal powers when the submarine area adjacent to their territory has the configuration of a shelf, defined by the limit of the 100-fathom line. Potential or future powers would be enjoyed by them, for example, according to the system adopted by the International Law Commission, with respect to *the slope and the corresponding part of the terrace*, and by all coastal States with regard to the other submarine areas adjacent to their territories. . . ." (Emphasis added.)

At ILC's eighth session (1956) at which consideration was being given to changing the definition of the continental shelf as it appeared in the 1953 draft (out to the 200-meter water depth line), Dr. Garcia-Amador proposed a definition substantially the same as that in the Ciudad Trujillo resolution of March 28, 1956. McDougal and Burke comment on this proposal as follows (*The Public Order of the Oceans*, by McDougal & Burke, p. 683):

"Some controversy attended the suggested elimination of the continental shelf term and the references to the 'continental and insular terrace', but this became muted when it was realized that a criterion embracing both a 200-meter depth and the depth admitting exploitation would embrace such areas if they were in fact exploitable or came to be."

A somewhat similar proposal by Panama was rejected by the Fourth Committee, no doubt for the same reason and also because the Panama proposal would not have automatically vested Convention rights to the 200-meter water depth contour (Report of Fourth Comm., pp. 32-33, 127).

Within the Fourth Committee the United Kingdom proposed an amendment to the definition to confer sovereign rights in the coastal nation for exploring and exploiting the natural resources "over the submarine areas adjacent to its coast but outside the territorial sea, up to a depth of 550 metres" (Report of Fourth Comm., p. 132). It was stated that "the continental slope ended in most places at that depth [550 meters]" (*id.*, at 36). The reasons underlying the rejection of this proposal are not specified, but it would appear that the delegates did not want to restrict the Convention's exploitability coverage to the specified depth limit.

## 2. *Subsequent action by nations*

Since the Convention went into effect in 1964, the United States by action taken by the Interior Department, has clearly evidenced its construction that the definition extends far beyond the 200 meter water-depth line. In 1961, the Associate Solicitor of the United States Department of Interior issued a memorandum concluding that the Secretary's leasing power under the Outer Continental Shelf Lands Act, read in light of the Convention on the Continental Shelf, extends to an area lying about 40 miles off of California in water-depths ranging up to 4,020 feet with the greater part being in excess of 600 feet. The Secretary has also issued oil and gas leases in water-depths up to 1,500 feet.

Moreover, the Secretary of Interior announced, in June 1965, that he had authorized approval of plans of a company to conduct a core drilling project on the Continental Slope in the Gulf of Mexico off the coasts of Texas, Louisiana and Florida in waters ranging in depth from 600 to 3,500 feet. This "permit" or authorization is not to be confused with the grant of an oil and gas or other mineral lease. It appears that this permit was issued pursuant to § 11 of the Outer Shelf Act and the Secretary made clear in the permit that "No rights to any mineral leases will be obtained from these core drilling programs." Also, on May 26, 1967, the U.S. Geological Survey announced approval of plans for another company or group of companies to conduct a core drilling program on the Continental Slope beyond the

continental shelf "off Florida and northward to points seaward of Cape Code and Georges Bank." The release states that "No rights to any mineral leases will be obtained from these core drilling programs". The release indicates that about 21 core holes will be drilled beneath the floor of the Atlantic Ocean in water ranging in depths from 650 feet to 5,000 feet. The depth of penetration in each core test is limited to a maximum of 1,000 feet.

In a letter opinion of February 1, 1967, from the Deputy Solicitor of the Department of Interior to the Corps of Engineers, it is made clear that the Department is of the view that Cortez Bank is an area under United States jurisdiction under the Outer Continental Shelf Lands Act and the Convention on the Continental Shelf. Cortez Bank is located about 100 miles from the California mainland and is separated from the mainland by ocean floor trenches as much as 4,000 to 5,000 feet deep, although the Bank itself is covered by shallow water.\*

At the March 11, 1968, meeting of the United Nations Ad Hoc Committee to Study the Sea-Bed and Ocean Floor Beyond the Limits of National Jurisdiction, the spokesman for Canada said (A/Ac. 135/1, p. 33):

"In the view of the Canadian authorities, the present legal position regarding the sovereign rights of the coastal States over the resources of submarine areas extending at least to the *abyssal depths* is not in dispute." (Emphasis added.)

And, according to the U.N. press release of the March 21, 1968, meeting of the Ad Hoc Committee (U.N. Press Release GA/3585), the Canadian spokesman's views are reported thus (p. 2):

"The [Ad Hoc] Committee should define the limits of the area covered by the resolution [Gen. Ass. Res. 2340 (XXII)]. In his view, the areas over which coastal States had sovereign rights included, without doubt, the continental shelf *and its slope*." (Emphasis added.)

In view of the foregoing, the United States would be fully justified in asserting that the Convention on the Continental Shelf encompasses the continental margin.

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\* Barry, "Administration of Laws for the Exploitation of Offshore Minerals in the United States and Abroad", ABA National Institute on Marine Resources, 6/9/67, p. 12.

[End of Appendix by Mr. Stone.]

# SECOND INTERIM REPORT, COMMITTEE ON DEEP SEA MINERAL RESOURCES, THE AMERICAN BRANCH OF THE INTERNATIONAL LAW ASSOCIATION, JULY 1970

## I. INTRODUCTION

Interest in and concern for the availability of new sources of ocean minerals, both fuel and non-fuel, are intensifying around the globe. A serious, and probably prolonged, process of debate and development relating to the creation of a body of international law to govern deep seabed mineral recovery is now taking place in a number of international and domestic forums. States are moving to clarify their national and shared interests in ocean resources development.

The purpose of this Report of the American Branch Committee on Deep Sea Mineral Resources is to discuss considerations relating to the exploration for, and the exploitation of, mineral resources beneath the world's oceans beyond the limits of national jurisdiction and to make recommendations concerning the legal framework for such exploration and exploitation.

This Report builds upon our Interim Report of July 19, 1968, in which this Committee preliminarily examined the question of the establishment of a deep seabed regime. That 1968 Report also discussed at length the question of the seaward limits of exclusive national jurisdiction over the exploration and exploitation of the natural resources of the seabed. We then expressed the conclusion that the language of the 1958 Geneva Convention on the Continental Shelf was sufficiently precise in its definition of the seaward limits of exclusive national jurisdiction to require no amendment. In our view, the development of customary international law supports the same conclusion. Accordingly, the Committee stands on its prior position that rights under the 1958 Geneva Convention on the Continental Shelf extend to the limit of exploitability existing at any given time, within an ultimate limit of adjacency which would encompass the entire continental margin. This Report now goes on to discuss the development of a deep seabed regime beyond the limits of national jurisdiction.

This Report draws heavily upon studies made by the Secretary General of the United Nations, the statements of delegates at the U. N. Seabeds Committee, the reports of that Committee, writings of scholars, and reports of learned societies. We acknowledge these source materials as extremely helpful to us in this Introduction rather than by extensive footnoting.

## II. CONTEMPORARY DEVELOPMENTS

### A. *The United Nations*

After a year's initial work concerning the world's deep seabeds, the Ad Hoc Committee on the seabeds was succeeded at the 23rd Session of

the U. N. General Assembly by the "Committee on the Peaceful Uses of the Sea-Bed and Ocean Floor Beyond the Limits of National Jurisdiction."\* The new Committee, composed of 42 nations, was instructed, among other things, to study the elaboration of the legal principles and norms to promote international cooperation in the exploration and use of the seabed and ocean floor beyond the limits of national jurisdiction.\*\*

The principal activities of the Seabeds Committee since its creation have been discussions on possible legal principles — a framework for a future regime governing exploration and exploitation of the deep seabed (pursued mainly in the legal subcommittee) — and on technical and economic questions pertinent to such a regime (pursued mainly in the economic and technical subcommittee).

The U. N. General Assembly itself also has been active in seabeds matters and voted passage of four seabeds resolutions at its 24th Session in December 1969.

The first, Resolution 2574A (XXIV), requested the Secretary General to "ascertain the views of member States on the desirability of convening at an early date a conference on the Law of the Sea to review the regimes of the High Seas, the Continental Shelf, the Territorial Sea and Contiguous Zone, Fishing and Conservation of the Living Resources of the High Seas, particularly in order to arrive at a clear, precise and internationally accepted definition of the area of the seabed . . . beyond national jurisdiction, in light of the regime to be established for that area."

There is a likelihood of an affirmative response by a large number of member States to the Secretary General's poll requested in Resolution 2574A (XXIV). Such a response could pose serious problems. A premature international conference without adequate preparation could delay for years the successful completion of a viable deep seabed regime, as well as possibly re-open many of the issues which were adequately resolved in the 1958 Geneva Conventions on the Law of the Sea. It may be noted that the International Law Commission engaged in almost a decade of preparatory work prior to the 1958 Conference. It seems certain that similar extensive preparation will be necessary to ensure the success of any conference dealing with a deep seabed regime.

\* A/RES/2467 (XXIII), December 1968.

\*\* The term "beyond the limits of national jurisdiction" has been used to mean beyond the seaward limits of a coastal nation's exclusive sovereign rights to explore and exploit the natural resources of its legal Continental Shelf.

The second resolution (2574B) passed by the General Assembly referred the major seabed issues to the Seabeds Committee, from which it requested preparation of a comprehensive and balanced set of legal principles to be submitted to the General Assembly at its 25th Session this fall. The resolution also sought to encourage the Seabeds Committee to formulate recommendations regarding the economic and technical conditions and the rules for the exploitation of the resources of the seabed in the context of the regime to be established.

The March 1970 meeting of the Seabeds Committee did not reach agreement on such a set of principles. The Committee, however, did produce an informal document setting forth alternatively phrased general principles which could provide the basis for further refinement at its August 1970 meeting in Geneva. At that meeting the Seabeds Committee will have the opportunity to produce the set of legal principles requested of it.

The third seabeds resolution (2574C) called upon the Secretary General to prepare a further study on various types of international machinery,\* particularly an international mechanism which would have jurisdiction over peaceful uses of the deep seabed including power to control all activities relating to exploration and exploitation of seabed resources.

The Secretary General had previously prepared a comprehensive study on possible forms of machinery,\*\* which included the models of a "registry" system, a "licensing" system, and an international operating agency. The fact that this resolution was adopted by the General Assembly after the Secretary General had already conducted a "machinery" study is suggestive of the support among some underdeveloped nations for an international operating agency, and suggestive of their apparent present disapproval of a registry or licensing arrangement, such as has been recommended by some of the developed nations.

The fourth resolution (2574D) — the so-called Moratorium Resolution — passed by the General Assembly last fall declared that pending

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\* The term "machinery" has been used to mean several things. To some, it means the rules and procedures relating to substantive rights and duties for the exploration and exploitation of deep seabed resources. To others, it means the form of an international administrative agency, including its composition and authority, which would have some relationship to a future agreed upon system of deep seabed exploration and exploitation. Others have used the term to mean a combination of rules and procedures plus an international administrative mechanism.

\*\* A/AC. 138/12 and Corr. 1 and Add. 1 and Add. 1/Corr. 1 (June 1969).

the establishment of an international regime, States and persons, physical or juridical, were "bound to refrain" from all activities of exploitation of the resources of the area of the seabed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction. The resolution also declared that no claim to any part of the deep seabed or its resources should be recognized. Further discussion of this resolution and its implications follows under Section VII of this report.

### B. *The United States*

Much interest has been stimulated in the public and private sectors in the United States regarding the development of a deep seabed regime. In 1969, the National Commission on Marine Science, Engineering and Resources released its report. *Our Nation and the Sea*, which addressed, *inter alia*, the problem of establishing a deep seabed regime.

Several committees of Congress have been investigating the question of the development of a deep seabed regime and related questions, as have many scholarly and professional organizations.

The most far-reaching event within the Executive Branch of the U. S. Government relating to seabed matters was the White House statement of 23 May 1970. In it the President outlined his position calling for a multilateral treaty which would create a "trusteeship zone" between the 200-meter isobath (or the seaward limit of the territorial sea, whichever is farther from the coast)\* and the seaward edge of the continental margin, and which would also contain provisions relating to exploration and exploitation of minerals of the deep seabed beyond the trusteeship zone — both within one ocean regime.

In this Report we concern ourselves primarily with the question of a regime for the exploration and exploitation of deep seabed mineral resources located beyond the area of exclusive coastal state jurisdiction. Limitations of time have not permitted us to explore fully the implications of the President's recent proposal, and we do not here address ourselves to it at any length. It is understood that a possible plan to implement his proposal will be submitted to the U.N. Seabeds Committee in August 1970. At this time we would note only that the concept of a "trusteeship zone," properly construed, appears capable of accommodat-

\* The President also called for conventional agreement on setting the limits of the territorial sea at 12 miles, coupled with a right of free transit through and over international straits affected by such a limit. The text of the President's statement appears in the Appendix to this Report.

ing many of the points favoring exclusive coastal state jurisdiction in this area which were discussed in our 1968 Report.

### III. DEVELOPMENT OF DEEP SEA RESOURCES: THE STATE OF PRESENT KNOWLEDGE

Some 20 minerals are currently being produced from offshore deposits, although none of these is yet recovered from the great ocean depths. By far the largest of these in total value is petroleum, which makes up about 90 percent of the total value of current subsea mineral production. Sulfur and salt are also produced offshore by drilling, and coal and iron ore are mined by underground methods from a land or artificial land entry. A considerable variety of heavy minerals — including tin, diamonds, ilmenite, rutile, monazite, magnetite — are mined from placer concentrates in surficial deposits near shore. Sand, gravel, and shell are other unconsolidated surficial deposits that are being produced offshore in increasing quantities.

In assessing potential subsea mineral resources, it is most useful to categorize them in terms of two major geologic features, namely the continental margins and the deep ocean basins. The continental margins are the submerged parts of the continents and they are composed largely of granitic igneous rocks and thick accumulations of sedimentary rocks similar in composition to those of the main continental masses. The deep ocean floor, by contrast, is underlain mainly by basalt and related igneous rocks, with sediments thin or absent in most places.

The mineral deposits associated with the continental margins are nearly as diverse as those mined from the continental lands themselves. They include not only the minerals already being produced, but also other saline minerals, such as potash salts, which might be recovered from drill holes, phosphorite in surficial deposits, as well as a considerable variety of minerals that might some day be mined by underground methods near shore.

For the next few decades, however, it seems likely that minerals produced from the continental margins will remain qualitatively similar to the present. Petroleum production will continue to increase and by 1980 offshore production may supply about one-third of the world's needs. Whereas most of the present production comes from water depths of less than 100 meters, the existing capability for deeper production is expected to grow, and estimates of capability by 1980 range from 600

meters to 1,800 meters. Because of the higher costs associated with petroleum production at these and greater depths, as well as the availability of lower cost sources in shallower areas and on land, petroleum production from depths greater than 200 meters probably will not be large in the immediate future. The petroleum potential, however, in the continental margin is substantial and is generally thought by geologists to be comparable to that on dry land.

Potash and perhaps other saline minerals may also be added to the list of minerals produced from the continental margins within the next several years. The production of heavy mineral concentrates from placer deposits near shore probably will continue to contribute a small portion of the total value of offshore production. Coal, iron ore, and other bed-rock deposits also will continue to be mined, but for the next few decades their production will remain located in near-shore extensions of land deposits. Phosphorite in surficial deposits ranging from beach deposits to deposits at depths of a few hundred meters, currently exploited in only a few places, may also be mined for nearby markets far removed from the richer and lower-cost land deposits that are abundant on a world-wide basis.

The minerals associated with oceanic crust that have prospective value — although not for several decades — appear to be restricted to metals that are typically associated with basalt and related igneous rocks. Several of these — manganese, nickel, copper, and cobalt — are also found in the manganese-oxide nodules, more likely to be exploited in the near future, which are widespread on parts of the deep ocean floor. Recently muds rich in some of these and other metals have been found associated with hot brines in deeps in the Red Sea, and it is possible that similar deposits may be found in other parts of the ocean basins. None of these deposits has yet been mined commercially, but some of those who are actively investigating ways and means of mining and refining the metals from the manganese nodules believe that it will be possible to recover them profitably within the next several years. The availability of these metals in lower-cost land deposits may retard subsea production for some years, but the metalliferous deposits of the deep ocean basins constitute an enormous potential resource available when needed in the future.

The possibility of the occurrence of petroleum beneath the deep ocean floor cannot be entirely ruled out on the basis of present knowledge, but the prospects for its occurrence there are not comparable to those on

the continental margins. For this reason, as well as the higher costs of production from such depths and the availability of lower-cost accumulations on the margins and on land, it is most improbable that there will be any significant petroleum production from the deep ocean basins for at least several decades.\*

There is still much to be learned about the nature, location and quantity of deep seabed mineral resources. More importantly, there still is much to be done in the promotion of deep seabed technology, which is now only in its earliest stages of development. Certainly until more is known about the resources of the deep seabed and how to recover them profitably, the inherent handicaps placed upon those now attempting to work toward the successful completion of a deep seabed regime are such as to require minimizing man-made elements of uncertainty.

Despite a lack of sufficient factual knowledge, however, some general suggestions as to the areas of concern which should be focused upon in further study of a deep seabed regime may prove useful. Accordingly, in Sections IV and V we seek to identify some of the issues which should be raised and resolved in the preparation of such a regime.

#### IV. ESSENTIAL ELEMENTS AND OBJECTIVES OF A DEEP SEABED REGIME

In our 1968 Report it was stated that "successful mineral laws offer three general types of inducement to attract capital and talent:

"(1) The mineral regime must offer encouragement to look for minerals, that is, to undertake reconnaissance or prospecting in the hope of finding areas promising enough to justify later expenditures on concentrated exploration.

"(2) Security of tenure is essential. The enterprise which drills wells or sinks shafts in search of minerals is gambling large sums, with the odds heavily against the finding of a mineral deposit of value justifying the amount of money invested. It requires the exclusive right to occupy a stated area for exploration and the exclusive right to produce minerals discovered in that area, and to do so for an assured period of time — both the area and the time being commensurate with the character of the risk taken and the amount hazarded.

\* See generally on this subject McKelvey and Wang, *World Subsea Mineral Resources*, (2nd printing), Department of the Interior, U. S. Geological Survey (1969).

"(3) The mineral venture must have a reasonable prospect that, in the event of success, the exactions of the granting authority, in royalties and taxation, will not be oppressive, so as to stifle the undertaking or discourage its continuance."

The central problem posed, however, in applying these inducements to the development of deep seabed resources, whether subsoil or surficial, is that — unlike dry land, the bed of the territorial sea, and the legal continental shelf — the deep seabed is an area beyond exclusive national jurisdiction. Thus a regime for the deep seabed which encourages investment and provides security is not dependent upon the will of one sovereign, but the acquiescence of many sovereign states. Accordingly, a basic requirement in the development of a deep seabed regime is to design provisions attractive to the largest possible number of states. Achieving this objective involves not only the formulation and adoption of provisions favorable to those states which may be technologically ready, willing, and able to undertake deep seabed mineral recovery operation, but also the inclusion of provisions favorable to those states lacking the technical expertise necessary to engage in deep seabed mining.

The duty of states toward one another beyond the limits of exclusive national jurisdiction over seabed resources is to act "with reasonable regard to the interest of other states in their exercise of the freedom of the high seas."\* This collective duty may be interpreted by some as falling short of providing the affirmative multilateral recognition of any one nation's claim to an exclusive right to the mineral resources of a given deep seabed area which is necessary to ensure security of tenure. In order to provide such security, broad multilateral support for a seabed treaty will be necessary.

The paramount objective in developing a deep seabed regime is to provide a legal framework whereby the minerals of the deep seabed can be put to man's use in a manner which will also protect other ocean uses. Other objectives should include assurances that all interested states will have access, without discrimination, to the deep seabed for the purpose of exploring and exploiting mineral resources; and that no state, group of states, or any other entity be permitted to monopolize the recovery of deep seabed mineral wealth or control access to it. This would preclude the holding of seabed areas for purely speculative purposes without intent to develop them.

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\* Article 2 of the 1958 Geneva Convention on the High Seas.

Further objectives should be to assure that exploration and exploitation of seabed mineral resources will be carried out in a manner that will protect human life; to prevent conflicts between users of the deep seabed insofar as possible and to provide for their orderly settlement if they arise; to avoid damage to the ocean environment, including all of its resources; and to promote sound conservation practices.

Complementary objectives which facilitate the achievement of the aforementioned substantive goals might include:

(1) The encouragement of scientific research related to seabed resources, and the dissemination of resultant information.

(2) The development of services, such as aids to navigation, maps and charts, weather information, and rescue capabilities.

(3) The formulation of terms and procedures governing liability for damage resulting from exploration and exploitation of deep seabed minerals so that damage may be adequately repaired or compensated.

(4) The development of safeguards to ensure the stability of rules governing rights and duties related to deep seabed exploration and exploitation, yet containing sufficient flexibility for amendments required as a result of new knowledge and experience.

(5) The formation of procedures for settlement of disputes arising out of deep seabed mineral development.\*

Other and more refined procedural objectives will undoubtedly be recognized as the international debate on these issues continues to progress.

## V. DESIGN FOR A DEEP SEABED REGIME

The form of a legal regime capable of ensuring the achievement of the foregoing objectives has been the subject of much debate at the UN Seabeds Committee, within governments, in learned societies, and among scholars generally. The extreme views as to the ideal scope of a future regime range from no formal international arrangement at all to a supranational ocean monopoly capable of controlling all access to and uses of the deep seabed and overlying high seas.

In our view neither of these extremes represents a practical solution. The no-agreement or laissez-faire approach would not provide express

\* These five objectives were identified in the working paper tabled by the U. S. delegation to the UN Seabeds Committee on 17 March 1970.

assurances of common benefit and stability of investment, and has other inadequacies as well. Yet an all-powerful monopoly is even more objectionable. Monopoly power, however benevolent the despot, is always open to abuse. This is particularly true in an international area where checks and balances on such abuse are not readily available. The interest of the international community in the potential of the area makes it essential to avoid the creation of such a power.

The range of acceptable possibilities therefore appears to lie in the middle ground between these extremes. Approaches in this category have generally been described in terms of an "international registry system" or an "international licensing authority." There is a danger, however, in resorting to the use of such global labels without a careful examination of the content and aggregate effect of the specific rules and procedures which would be incorporated in such concepts. Accordingly, rather than describing by use of a label the type of regime we would favor, we feel it more useful to discuss considerations which should be dealt with in the substantive framework.

On this pragmatic basis, we address ourselves here to three broad questions which must be answered in designing such a framework:

- a) Who is entitled to acquire rights to seabed resources under the regime?
- b) What are the nature and extent of the rights involved?
- c) What kind of international arrangements are required to assure the protection of the rights involved, the observance of acceptable standards, and the handling of any revenues designated for the international community?

Each of these questions is discussed below.

#### A. Entities Entitled to Acquire Rights

It is the prevailing opinion in our Committee that only states, or groups of states, should be entitled to acquire rights in seabed areas subject to the regime.\* Besides the harmony of such a view with the recognized pattern of international society, this approach serves three important practical purposes: it confines to a manageable number and to a single kind the entities with which the regime must deal; it identifies clearly the parties internationally responsible for seabed activities; and

\* It has been suggested by several members that this conclusion might be qualified to the extent of permitting private companies to acquire rights directly, particularly if sponsored by a state, but this is not the majority view in the Committee.

it simplifies the settlement of disputes. The fact that only a state may hold rights on the international level should not, however, restrict its freedom of choice as to the arrangements it might make for the conduct of development activities subject to its authority. It should be fully at liberty to undertake such activities itself, or through public or private enterprises, so long as the requirements established by the regime are observed.

It need hardly be said that all states (including landlocked states) which are parties to the regime should be equally entitled to embark on deep-sea ventures within the prescribed limitations.

## B. The Nature and Extent of Rights

### 1. *Functional Requirements*

In the development of mineral resources three stages may ordinarily be distinguished: a) *prospecting*, in which preliminary survey work of a general character is carried on to identify broad areas geologically favorable for such resources; b) *exploration*, in which detailed surveys and evaluation are carried on to locate promising deposits within an area; c) *exploitation*, in which commercial production from such deposits is undertaken. It may be presumed that these stages will also occur in the development of resources on and under the deep seabed. It should be noted that the stages here defined are to be distinguished from the conduct of scientific research essential to a better understanding of the phenomena of ocean space. Whatever rights are eventually established with respect to development activities, the deep seabed should remain open to disinterested scientific investigation, unrestricted save by measures necessary to protect other uses and the environment.

We believe that the international regime need not be concerned with the first of these stages so long as the prospector seeks no priority over others and so long as the activities present no hazard to the environment. Prospecting is normally a non-exclusive activity, with no prolonged or significant disturbance of the area under investigation or of other uses. The same considerations would appear to apply to deep-sea areas, where there is the additional reason that prospecting should be encouraged in order to enlarge knowledge generally concerning the mineral potential of these areas. For these reasons, coupled with the fact that legal restrictions on deep-sea prospecting would be difficult to enforce, we believe that such prospecting in any unclaimed areas should be open to all without any requirement of notice and without charge.

Beginning with the second stage, substantial expenditures may be required and the need grows to protect the investment and the possible reward for extended effort. At this point we think it desirable that opportunity be provided for the acquisition of exclusive rights of exploration and exploitation, subject to limitations and conditions of the kind discussed below. In areas where such rights have been acquired by a state, prospecting by other parties which would infringe thereon should not be permitted without that state's consent.

## *2. Juridical Character of Rights*

The legal rights and duties to be attributed to states undertaking to participate in seabed mineral development should be designed to satisfy both the functional requirements described above and the need to safeguard the general interest in such matters as efficient production, environmental protection, and the free use of the high seas and their seabed for other purposes. In our opinion these aims are not well served by attempts to confer "sovereignty" or "sovereign rights" over deep seabed areas either on states or on some international entity. This point, already well understood with regard to states, should clearly be applicable also to international organizations. The mystical concept of "sovereignty" should not be allowed to becloud practical efforts to solve practical problems or to provide an excuse for claims unrelated to seabed resources.

The view which we prefer regards the rights here involved as functional rights to explore for and produce seabed resources, and to assure an exclusive marketable title to any material produced. By their nature such rights are restricted in scope and duration to the resources with which they are concerned; but within the limitations prescribed by the regime they are exclusive and absolute. And inseparably associated with them are the duties to observe requirements of diligence, minimize waste and pollution, avoid unnecessary injury to living resources of the sea, and act with due regard for other users of ocean space.

## *3. Acquisition of Rights*

The acquisition of exclusive rights by a state in an area of the deep seabed should be effected, we believe, through filing a notice of claim with the international office described below. Provided that the notice conformed to the regulations promulgated under the regime and did not conflict with any prior claim, the international office would have no authority to refuse to receive it. The rights attributable to a claiming state under the regime would take effect from the time of acceptance by

the international office under the prescribed rules. A fee would be payable at that time, but in our view this should be moderate in amount and related to the actual administrative expense of the office.

There are several possible ways in which to design a filing system. One method would be to recognize rights on the basis of simple priority in time — essentially a "first in filing, first in right" basis. Other alternatives would be a bidding system or a lottery, or various combinations of both. All face the problem of dealing equitably with competing interests, and all have shortcomings in achieving this goal. In our opinion further investigation is required in order to determine the particular approach to be preferred in terms of acceptability and practicality. We would note, however, that the problem will not be solved by conferring powers of allocation on the international agency. This merely complicates the question of equitable treatment by introducing the risk of an abuse of administrative discretion.

#### *4. Transfer of Rights*

The transfer from one state to another of rights in seabed areas, or parts thereof, is a matter which presents serious difficulties. We prefer the view that such transfers should not be permitted. At the least, they should not be permitted after substantial investment has been made by persons operating under the authority of the first state. An essential element in the security of tenure required for development is the assurance that operators can rely on the continued presence of the state with which they have made satisfactory arrangements. The possibility that they may acquire at any time a new and perhaps unfriendly licensor will not encourage them to embark on the undertaking. The situation, we would note, is not analogous to problems of state succession, for the subject matter is not national territory and the international community has a direct concern in maintaining the stable conditions necessary to produce the benefits which accrue to it under the regime.

If, however, transfer is to be permitted, it should be subject to appropriate conditions. Where no substantial development activity has occurred, these should at least require that the transferee state be a party to the seabed regime, and that such state not acquire by virtue of the transfer total holdings in excess of any prescribed maximum. The international office should be required to verify these points before accepting notice of the transfer for filing. The transferring state should not be able, however, to shift responsibility for any liabilities arising out of its holding of the area without the consent of the parties to whom they were

owed. The situation, we would note, is unlikely to arise often if diligence requirements for claims call for early substantial investment.

Where substantial investment has been made in the area by private operators in reliance on agreements with the first state, we believe a prohibition on interstate transfer to be both the simplest rule and the one best calculated to encourage investment. While it might be possible to require that the operators' consent be obtained prior to any transfer, or that their established rights be recognized by the transferee state, such provisions would very likely be viewed by the operators as inadequate protection. In such circumstances it would seem important to provide as a minimum that operators not wishing to accept the transfer should have the option to recover from either or both states full compensation for the investment made by them. Yet the obvious difficulties in implementing such provisions, which might well deter private operators from embarking on ventures in the first place, confirm us in our view that non-transferability is the preferable course.

We would emphasize that the foregoing comments relate only to the transferability of claims from state to state. Transfers between operators who hold rights under the same state are a matter for that state's domestic law, subject to the international standards of conduct discussed below. Transfers between operators who hold rights under different states would likewise appear to be a matter for the states concerned, again subject to the international standards.

### *5. Size and Scope of Permissible Claims*

Under any system of handling claims, it would appear essential to set an internationally agreed maximum limit on the aggregate area of seabed that any one state could hold under claim at one time. Such a limit would be determined by negotiation at the time of creating the regime and would presumably take into account the size of each state, its population, its stage of economic development and perhaps other factors. Some such ceiling would help to promote a wide distribution of mining rights, facilitate equality of access for all states, and prevent speculative claims to unworkably large areas. It might indeed be desirable to carry the restriction a stage further and limit the holdings that any one state could acquire in a particular geographical region, so as to prevent promising areas from being monopolized.

In considering the possible pattern of claims under such an approach, we can foresee two lines of development, depending on the particular

form in which the regime is framed. On one alternative, involving a minimum of international administration, states would file claims to one or more relatively small areas, presumably corresponding roughly to tracts of geological interest. Such claims, resembling those which can be staked out by individuals under the municipal mining laws of some countries, might well originate from expert technical advice that the area might provide the basis for a successful mining operation of a specific kind. They would tend to focus, in other words, on areas of workable size with a potential of early return. The resulting global pattern would probably be an assortment of claims dotted like islands around the oceans: sometimes clustered in groups, sometimes isolated, but with large ocean spaces left unclaimed.

A more elaborate alternative to this pattern has been suggested by some members of the Committee. This would contemplate the establishment under the international regime of a grid system covering deep seabed areas. In such a system blocks of uniform size would be marked out and numbered so that states could select areas by reference to numbered blocks. If transfer were to be permitted, states which decided not to develop areas selected by them could assign their rights to other states, or surrender them in exchange for a specified share in a development fund derived from royalty payments. The advantage of such a scheme would be that the basic right of states to select resources development rights on their own initiative would be combined with equitable limitations and with freedom to retain rights, sell them to others prior to development, or convert them into rights to share directly in a development fund. A disadvantage would be the risk that large areas of seabed, of which only a small part might have exploitation value, might be subjected to exclusive rights without any real prospect of development. Diligence requirements for large blocks would also be difficult to prescribe and enforce. Furthermore, the transferability feature of the scheme would raise the problems already noted above under that heading.

Under this system the resulting pattern of claims, even if many blocks were not taken up, would be quite different, although the underlying principles would be the same. At the present time we express no firm preference for one or the other method, although a majority of our members have reservations about the grid system. Each can be seen to have advantages and drawbacks. The particular system to be finally adopted seems to us to be a proper subject for negotiation.

A further question which we are not yet prepared to answer with assurance is whether a claim should cover all seabed resources in the

specified area or whether it should be confined to enumerated substances, thereby leaving open the possibility of a claim by another to different substances in the same area. Conceivably, for example, operations to recover manganese nodules and to produce petroleum could be carried on in the same area without undue interference with each other. Considerations of simplicity favor the "comprehensive" approach, considerations of maximizing development of all kinds lend some support to the "particular." In the present stage of scientific knowledge, it is difficult to determine how serious a practical problem this may prove to be.

#### *6. Duration of Rights; Diligence Requirements*

As an incentive to development, the exclusive rights held by a claiming state in a given area should be subject to a time limitation and to requirements of diligence. Such conditions can be framed in various ways, and the precise form they should take should be the subject of further study. The basic guidelines, however, are clear. The time limitation should be designed to assure a period potentially long enough to enable an operation to pay out the capital invested and to earn a return thereon commensurate with the risk involved and the return on like investments elsewhere. The diligence requirements should most certainly be designed to prevent a state from sleeping on its rights. The objective throughout should be to deter attempts to hoard areas or resources and to encourage steady development toward the goal of production.

Among various possible approaches, one may be cited by way of example. The original claim by a state might receive recognition in the first instance for a relatively short period — perhaps ten or twelve years from the time of filing. If at the end of that period commercial production were taking place, or if substantial investment had been made and progress in development were evident, the exclusive rights of the state would be renewed for a further ten years. The state would be entitled automatically to several such renewals, provided that at the end of each period active operations were under way. At each stage there might also be options or requirements that parts of the area not under development be relinquished. What the maximum possible duration should be would depend primarily on economic criteria, but presumably it could be on the order of 40 or 50 years after the commencement of production.

Under such a system as this, a state's exclusive rights would terminate either at the end of any period in which active operations were not in progress, or at the end of the last allowable period. The area would then

become open to new claims. The initial determination of whether a state had or had not complied with the requirements would be a function of the international office in accordance with prescribed regulations; but any state against which such a determination was made should be entitled to a review of the matter under the dispute settlement provisions of the regime.

### *7. International Standards of Conduct*

As a further condition for the recognition and maintenance of a claiming state's exclusive rights, compliance with certain minimum international standards of conduct should be required. These standards should reflect the interest of the international community both in encouraging resource development and in assuring that this takes place in an acceptable manner.

In order to encourage development, it is necessary to assure security of tenure not only to a claiming state but also to those parties who operate under the state's authority and whose activities constitute the development. In cases where these operators are private parties of nationalities other than that of the claiming state, they should be entitled to protection under the regime against arbitrary action by the claiming state and against its failure to comply with the requirements of the regime. Thus the wrongful taking of property, or the termination of a lease or license other than in accordance with its terms, should be prohibited. If any such allegedly arbitrary action or omission should occur, the private party should have automatic access to an impartial tribunal for a determination of its rights. If these rights were found to have been substantially violated, the state concerned should be required as an incident of the regime to make appropriate redress.

The second aspect of the international standards of conduct relates to what may be described as operating standards. These should cover human health and safety, the prevention of unjustifiable interference with other uses of the high seas, the minimizing of waste and pollution in mineral exploitation, and the protection of other resources. Nothing should prevent a state, however, from applying stricter standards to its operations as a matter of domestic law.

### *8. Inspection and Compliance*

To reduce the need for elaborate international machinery to conduct on-site inspections, a claiming state should be required to conduct inspec-

tions and to submit to the international office reports on operations undertaken in its areas of exclusive rights. Many countries, however, may not have the capability to inspect and supervise operations properly; or there may be reason to believe that for other reasons a state's own controls are inadequate to safeguard the interests of the international community. In view of such possibilities, the international organization should have the authority and capability to inspect any operations at will in order to verify compliance with the prescribed international standards.

If as a result of such an inspection any operation were found to be not in compliance with those standards, and if the situation were not rectified by the claiming state, the international agency should have power to require the state to correct the delinquency within a reasonable time. If the state failed to do so, the agency could withdraw recognition of the state's claim, thereby terminating its exclusive rights, and announce that the area in question was open for acquisition by other states. Any state against which such a decision was taken should be entitled to a review of the matter under the provisions of the regime for settlement of disputes.

#### 9. *Liability for Damages*

Any deep-sea mining operation will necessarily be attended by risks of accidents. Ordinary industrial accidents will presumably be governed in most cases by the law of the claiming state; from the international standpoint the principal concern is the major mishap which causes damage to the interests of other states or their nationals. Examples would be large oil spills having harmful effects on marine life or neighboring shore lines; large fires or explosions; and the escape of noxious substances in the course of mining operations.

It seems clear that international liability should attach to a claiming state for harmful effects caused to other states or their nationals by its operations. This is no more than an extension of existing principles. But there is a question whether this liability should be absolute, regardless of fault. We doubt if so strict a standard is desirable, for if the prospects of liability appear too overwhelming, development will again be discouraged. We would tend to favor strict operational standards, with liability arising from any failure to comply therewith, rather than the imposition of liability for mishaps occurring without fault. Further attention might well be given to devising insurance arrangements under the regime which would provide at least some compensation for massive disasters not attributable to fault.

### C. Structure of the International Agency

#### 1. *Functions*

The kind of system outlined in the previous sections requires the establishment of an international agency for its administration. This agency, which has been earlier referred to in passing as an "international seabed office," would be a separate and autonomous unit in relationship with the United Nations. It would be charged with three principal functions.

The first of these would be to receive, record and disseminate notice of claims filed by states, under whatever system might have been prescribed. Presumably that system would be laid down in some detail, so this function would be largely clerical and administrative.

The second duty of the agency would be to perform monitoring functions with regard to seabed operations conducted under the regime. These would include the activities necessary to assure compliance with the proposed international operating standards and the requirements of diligence. In this field the agency would have power to require the correction of improper practices, the ultimate sanction being withdrawal of recognition of a claiming state's exclusive rights. Such a withdrawal, however, should be subject to review by an impartial body upon request of the state concerned.

The third function of the agency would be to receive the various fees and payments due from a claiming state to the international community. This would be primarily an administrative function of an accounting character, but here also substantial or prolonged delinquency in payment should lead to withdrawal of recognition. The amounts received would be paid over, after the deduction of the agency's operating expenses, to an international fund to be used for agreed international community purposes under the management of a wholly separate body. The seabeds office would have no responsibility for the application of this fund, for in this context also monopoly power should be avoided.

#### 2. *Organization*

It is our belief that the seabeds office should be organized in the simplest possible fashion consistent with the efficient and impartial performance of its functions. Particularly at the outset an elaborate and expensive organization should be avoided, since it is by no means clear that seabed mining operations will require or can support an extensive bureaucracy.

There are numerous ways in which the structure of the agency can be framed, and the problem should be approached flexibly. By way of example, one possible plan could be built around a directorate or governing council on which all states parties to the regime would be represented. Voting in such a council should in our opinion be weighted, with additional voting power being assigned to those nations having the greatest technological capability for deep-sea operations. Some such recognition of the importance of these nations to deep-sea development must be granted, we think, if the regime is to be (as it must be) acceptable to them. A number of precedents for weighted voting are to be found in existing international arrangements, and it is believed that these may be reviewed to advantage when a statute for the agency comes to be drafted.

In addition to general supervisory powers over the administration of the regime, the council could well be vested with authority to frame within specified limits, and from time to time revise, regulations embodying the international operating standards and the specific requirements of duration and diligence for exclusive rights. Such regulations could be adopted and amended by some appropriate majority of the voting power in the council. Such a device would on the one hand facilitate changes shown to be desirable in the light of experience, while on the other hand removing them from the area of uncontrolled administrative discretion.

In addition to the council, the agency would require a principal executive officer and a small staff. It might also have provision for consultative committees of various kinds in order to have the benefit of expert advice in particular fields. Here again the experience of other international organs is likely to prove instructive.

### *3. Fees and Payments*

In addition to the moderate fee already referred to which would be payable at the time of filing a claim, we would envisage two other types of payments by the claiming state to the international agency. The first of these would be an annual rental calculated at so much per square kilometer or square nautical mile of surface area held under claim. In order again to encourage development, this should be set initially at a low enough figure to be attractive; but it might conceivably increase in later years, according to a prescribed scale, for areas not brought into production. This rental on acreage might well continue throughout the life of the claim, regardless of production, but it would be calculated at the minimum level for any areas with respect to which the payments described in the next paragraph were due.

The second type of payment by a claiming state would become an obligation from the time commercial production was commenced, and would bear a relationship to the value of the minerals produced. This relationship should be uniform for all states irrespective of their economic systems. Because of differences resulting from variations in these systems, it may be impracticable to relate this payment to such concepts as net value or realized profits; rather, it may be necessary to refer to some other base such as gross value (with provisions, of course, for determining a gross value in cases where the product is not sold). Alternatively, fixed payments per unit of production could be specified; but the problems of determining such a figure for a mineral of highly variable value are self-evident. The question is one singularly difficult of solution.

Considerations such as these suggest to us that it would be premature to indicate at this time either any particular method of calculation or any particular figures or range of figures. The complex technological and economic factors involved demand detailed analysis. In our opinion, however, the payments here proposed should in any case be determined under internationally agreed formulas and should not be the subject of negotiation between a claiming state and the seabeds office.

The final point which we would make is that the foregoing system of payments by states would be independent of the financial arrangements which any particular state might enter into with parties operating under its authority. These arrangements would be a matter for that state and its licensees alone. So long as the required international payments were made, the "local" arrangements could be either more or less onerous, as the policy of that state might dictate, and could be calculated by any method acceptable to those involved.

#### *4. Settlement of Disputes*

An essential feature of the seabed regime should be adequate arrangements for the expeditious settlement of disputes. Most disputes will probably fall into one of three categories: they will be either disputes between states regarding areas claimed by them; disputes between a state and the international agency over some act or omission by one or the other; or disputes over liabilities arising from operations. In our opinion the simplest way in which to deal with these problems is to leave the parties free to follow any recognized method of pacific settlement acceptable to them, subject to provisions for compulsory arbitration or adjudication in the event of failure to agree on any other method. In this connection the possibility might be considered of employing the proce-

dures for summary proceedings embodied in Article 26 *et seq.* of the Statute of the International Court of Justice.

A different category of disputes is those which may arise between a state and parties operating under its authority. Especially where such a dispute involved an alleged breach of the international standards, it might be well worth while to provide for its submission, failing other means of settlement, to some such agency as the International Center for the Settlement of Investment Disputes.

## VI. ESTABLISHMENT OF A DEEP SEABED REGIME

In the preceding pages we have outlined our views regarding the substantive elements of a future deep seabed regime. We now address ourselves to the procedures by which such a regime can be instituted.

At the outset we would reemphasize the necessity for wide international consensus on principles and policies if a viable regime is to be achieved. Unless the system is almost universally acceptable, particularly to those nations with a serious interest in seabed exploration and development, it will inevitably fail. Yet the road to such a consensus is beset with difficulties, as the frustrations of the U.N. Seabeds Committee have demonstrated. These difficulties can be cleared away only by painstaking efforts and a genuine desire on all sides to reach constructive solutions.

A regime of the kind we have described can in our opinion be created only by a multilateral treaty, the product of an international conference. Experience has shown that such conferences are successful in almost exact proportion to the depth and thoroughness of the preparatory work on which their deliberations are based. Hence we stress our belief that adequate time and attention must be devoted, in advance of such a conference, to identifying and developing areas of consensus and to devising proposals which carry at least a promise of acceptability. Even if this entails some years' delay, we think the time spent can be well worthwhile. The Seabeds Committee is the present forum for such efforts, and we would be pleased to see it succeed in its work; but if it fails to make progress, it may be desirable to refer the problem for consideration to some expert body insulated from the day-to-day pressures of the United Nations.

We appreciate that the problem of the deep seabed is only one of several major unsettled issues in the law of the sea — issues which can probably be resolved only by one or more international conferences. Whether all these questions can be dealt with at one conference will depend on whether they are ripe for agreement at that time. If they are,

agreement becomes possible; if not, they can adversely affect the chances of accord even on matters ready for settlement. We would therefore support the view that a conference should be confined either to the deep-sea regime exclusively or to such limited group of topics as are susceptible of settlement at the same time.

In our opinion it is also highly desirable to avoid insofar as possible a reopening of the 1958 Geneva Conventions. Such a reopening would seem to us an invitation to confusion, and would immeasurably compound the difficulties of reaching agreement. We should not thus jeopardize past achievements.

With regard to the mechanics of providing a treaty form for a seabed regime, we offer one suggestion. As has been noted, a principal difficulty in designing a regime arises from the dilemma that a legal framework for development has to be constructed at a time when much relevant technological and economic information is not yet known and will not be known until the development dependent on the legal framework gets under way. Requirements formulated on insufficient data can seriously hamper progress; yet if their revision is left solely to the discretion of officials in the international office, confidence in the legal security afforded to states and operators by the regime may be impaired. On the other hand, it is undesirable to write detailed provisions into the treaty itself because of the difficulties and further uncertainties involved in reopening a major multilateral instrument.

A review of the elements of an international regime outlined earlier indicates that they can be divided into two categories. One includes certain fundamental principles which may be expected to have continuing validity, such as those relating to the character and acquisition of rights, security of tenure, the maximum extent of claims, the general obligations as to operations and payments, the power and structure of the international office, and the settlement of disputes. The other category comprises the more detailed administrative matters such as precise arrangements for payments, the specific requirements for diligence, the international minimum operating standards and matters of a clerical nature. The first group should require amendment rarely; the second may require more frequent revision in the light of accumulating practical experience.

It is suggested that only the broad governing principles need be incorporated in the treaty proper. The detailed regulations, drafted in provisional form, could then be attached as an annex, given the force of law by the treaty but open to some simpler and speedier method of revision. As mentioned earlier, such revision, and possibly even the original fram-

ing, might be entrusted to the governing council of the international office, to be effected by a majority of the voting power.

## VII. INTERIM MEASURES

The so-called Moratorium Resolution (2574D) passed by the General Assembly in December 1969 declares that no deep seabed exploitation may be undertaken until the establishment of an international regime. If this Resolution were to be accepted as declaratory of law, there would be no need to consider interim measures, pending further development of a seabed regime. Such is not the case, however, as General Assembly resolutions of this kind are at most only recommendations. Nor can it be viewed as constituting evidence of a rule of law derived from the common opinion of states, since it was not the result of any careful preparatory work and it did not reflect the consensus necessary to demonstrate the existence of such a rule. It can impose no legal obligation whatever.

In our opinion the Moratorium Resolution was a disservice to the interest of the international community in two respects. First, in seeking to prohibit exploration and exploitation seaward of the limits of national jurisdiction, it created an inducement to push out these limits unreasonably in order to enlarge the area within which activity could occur. Second, it is highly desirable for the development of a viable deep seabed regime that as much knowledge and experience as possible be gained regarding the resources involved and the techniques required to recover them. We consequently take the view that exploration and exploitation should be encouraged to continue in the interval — which may well be a number of years — before an international regime of a permanent character can be brought into force. We believe that, upon reflection, the international community will share this view.

Nevertheless, such operations should be conducted in an orderly and responsible manner. This requires a clear understanding of what rights states now have with respect to undertaking deep seabed mining activities. Although conventional international law presently does not provide for rights which can create complete security of tenure for mining operations in deep seabed areas beyond exclusive national jurisdiction, it does provide some protection. Article 2 of the 1958 Geneva Convention on the High Seas, for instance, provides that freedom of the high seas shall "be exercised by all States with reasonable regard to the interests of other States in their freedom of the high seas." So long as any state's deep seabed mining operations are conducted with reasonable regard to the interests of other states in the deep seabed and the overlying high seas, such operations are permitted and protected by international law.

Notwithstanding that the Moratorium Resolution is without legal effect, it must be recognized as constituting a call for the nations of the world to exercise responsibility and restraint in the exploitation of the resources of the deep seabed. Pending agreement on a multilateral convention for the area beyond coastal state jurisdiction, every state is legally entitled to exercise its freedom to explore and exploit the deep seabed; but it is also essential that every state act in such a way as not to affect adversely the functioning of the regime to be established. To this end it is hoped that through good example and a continuing exchanges of views norms of conduct will begin to evolve which will promote orderly development of the customary and conventional law of the deep seabed.

Respectfully submitted,

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 P. E. BIRMINGHAM  
 WILLIAM W. BISHOP, JR.  
 WOODFIN BUTTE  
 LUKE W. FINLAY  
 ADRIAN S. FISHER  
 WILLIAM L. GRIFFIN  
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 WILLIAM J. MARTIN  
 JOHN E. MCCrackEN  
 MYRES McDUGAL  
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 CECIL J. OLMSTEAD  
 DANIEL WILKES  
 WILLIAM T. BURKE, *Rapporteur*  
 RICHARD YOUNG, *Rapporteur*  
 NORTHCUTT ELY, *Chairman*

(All members of the Committee, except Mr. Louis Henkin, join in the policy appraisals and general approach of this report. However, not all members agree with every detail with respect to implementation of policies. Many members believe that such implementation must await further technological development and knowledge with respect to the deep ocean area. Mr. Henkin states that he "dissents from this report, largely for the reasons that inspired his dissent from the Committee's First Interim Report.")

APPENDIX  
PRESIDENTIAL ANNOUNCEMENT ON  
U. S. OCEANS POLICY\*

The nations of the world are now facing decisions of momentous importance to man's use of the oceans for decades ahead. At issue is whether the oceans will be used rationally and equitably and for the benefit of mankind or whether they will become an arena of unrestrained exploitation and conflicting jurisdictional claims in which even the most advantaged states will be losers.

The issue arises now — and with urgency — because nations have grown increasingly conscious of the wealth to be exploited from the seabeds and throughout the waters above, and because they are also becoming apprehensive about the ecological hazards of unregulated use of the oceans and seabeds. The stark fact is that the law of the sea is inadequate to meet the needs of modern technology and the concerns of the international community. If it is not modernized multilaterally, unilateral action and international conflict are inevitable.

This is the time, then, for all nations to set about resolving the basic issue of the future regime for the oceans — and to resolve it in a way that redounds to the general benefit in the era of intensive exploitation that lies ahead. The United States as a major maritime power and a leader in ocean technology has a special responsibility to move this effort forward.

Therefore, I am today proposing that all nations adopt as soon as possible a treaty under which they would renounce all national claims over the natural resources of the seabed beyond the point where the high seas reach a depth of 200 meters (218.8 yards), and would agree to regard these resources as the common heritage of mankind.

The treaty should establish an international regime for the exploitation of seabed resources beyond this limit. The regime should provide for the collection of substantial mineral royalties to be used for international community purposes, particularly economic assistance to developing countries. It should also establish general rules to prevent unreasonable interference with other uses of the ocean, to protect the ocean from pollution, to assure the integrity of the investment necessary for such exploitation and to provide for peaceful and compulsory settlement of disputes.

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\* Released May 23, 1970 at 11:00 A.M.

I propose two types of machinery for authorizing exploitation of seabed resources beyond a depth of 200 meters.

First, I propose that coastal nations act as trustees for the international community in an international trusteeship zone consisting of the continental margins beyond a depth of 200 meters off their coasts. In return, each coastal state would receive a share of the international revenues from the zone in which it acts as trustee and could impose additional taxes if these were deemed desirable.

As a second step, agreed international machinery would authorize and regulate exploration and use of seabed resources beyond the continental margins.

The United States will introduce specific proposals at the next meeting of the United Nations Seabeds Committee to carry out these objectives.

Although I hope agreement on such steps can be reached quickly, negotiation of such a complex treaty may take some time. I do not, however, believe it is either necessary or desirable to try to halt exploration and exploitation of the seabeds beyond a depth of 200 meters during the negotiating process.

Accordingly, I call on other nations to join the United States in an interim policy. I suggest that all permits for exploration and exploitation of the seabeds beyond 200 meters be issued subject to the international regime to be agreed upon. The regime should accordingly include due protection for the integrity of investments made in the interim period. A substantial portion of the revenues derived by a state from exploitation beyond 200 meters during this interim period should be turned over to an appropriate international development agency for assistance to developing countries. I would plan to seek appropriate Congressional action as soon as a sufficient number of other states indicate their willingness to join us in this interim policy.

I will propose necessary changes in the domestic import and tax laws and regulations of the United States to assure that our own laws and regulations do not discriminate against U. S. nationals operating in the trusteeship zone off our coast or under the authority of the international machinery to be established.

It is equally important to assure unfettered and harmonious use of the oceans as an avenue of commerce and transportation, and as a source of food. For this reason the United States is currently engaged with other

states in an effort to obtain a new treaty for these purposes. This treaty would establish a 12-mile limit for territorial seas and provide for free transit through international straits. It would also accommodate the problems of developing countries and other nations regarding the conservation and use of the living resources of the high seas.

I believe that these proposals are essential to the interests of all nations, rich and poor, coastal and landlocked, regardless of their political systems. If they result in international agreements, we can save over two-thirds of the earth's surface from national conflict and rivalry, protect it from pollution and put it to use for the benefit of all. This would be a fitting achievement for this 25th anniversary year of the United Nations.

# REPORT, COMMITTEE ON DEEP SEA MINERAL RESOURCES, THE AMERICAN BRANCH OF THE INTERNATIONAL LAW ASSOCIATION, JULY 1972

## I. INTRODUCTION

In two previous interim reports, in 1968<sup>1</sup> and 1970,<sup>2</sup> this Committee has examined various aspects of the law of the sea in relation to the development of mineral resources lying on or beneath the seabed.

In 1968 we dealt chiefly with the question of the seaward limits of exclusive national jurisdiction, and came to the conclusion that under existing law the rights of the coastal State over mineral resources extended to the limit of exploitability at any given time, within an ultimate limit of adjacency encompassing the entire continental margin.<sup>3</sup>

In 1970 we considered the legal framework necessary to support and regulate in an equitable manner the development of mineral resources beyond the limits of national jurisdiction. We then concluded that a system of international registration of claims to exploit limited areas, filed by States either on their own behalf or on behalf of enterprises which States determine to sponsor, would provide an adequate basis for this development. We stressed the need to assure integrity of investments. We emphasized also the necessity of security of tenure—subject to diligence requirements, compliance with international minimum operating standards, and appropriate payments to an international authority—and the importance of effective dispute settlement arrangements. We also urged that the authority be kept efficient but unpretentious, and that its powers be carefully defined to avoid possible abuses of discretion. Finally, we proposed that any revenues received should go, after deduction of expenses, to an international fund to be administered by a wholly separate body.

<sup>1</sup> Proceedings and Committee Reports of the American Branch of the International Law Association, 1967-68, pp. 1-XXIX.

<sup>2</sup> Proceedings and Committee Reports of the American Branch of the International Law Association, 1969-70, pp. 23-52 [hereinafter cited as Proceedings and Committee Reports].

<sup>3</sup> This point was subsequently clarified by the judgment of the International Court of Justice in the *North Sea Continental Shelf Cases*, [1969] I.C.J. 3. The Court referred (para. 19) to "... what the Court entertains no doubt is the most fundamental of all the rules of law relating to the continental shelf, enshrined in Article 2 of the 1958 Geneva Convention, though quite independent of it, — namely that the rights of the coastal State in respect of the area of continental shelf that constitutes a natural prolongation of its land territory into and under the sea exist *ipso facto* and *ab initio*, by virtue of its sovereignty over the land, and as an extension of it in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources. In short, there is here an inherent right. In order to exercise it, no special legal process has to be gone through, nor have any special legal acts to be performed. Its existence can be declared (and many States have done this) but does not need to be constituted. Furthermore, the right does not depend on its being exercised. To echo the language of the Geneva Convention, it is 'exclusive' in the sense that if the coastal State does not choose to explore or exploit the areas of shelf appertaining to it, that is its own affair, but no one else may do so without its express consent." We do not find any inconsistency between the view thus expressed by the Court, and that stated in the 1968 Interim Report of this Committee.

In 1972 we continue to believe that these earlier conclusions remain sound in principle. We recognize, however, that developments since 1970 have complicated the task of framing a settlement which can win wide acceptance. The United Nations General Assembly's decision in December 1970 to convene in 1973 if possible a Law of the Sea Conference which would review the entire body of that law, including the four 1958 Geneva Conventions, made it certain that no one aspect of the subject would be dealt with by itself. Solutions for seabed mineral resource development will inevitably involve other matters relating to navigation, fisheries, security, environmental protection, and freedom of scientific research.

At the same time, the prolonged debates in the UN Seabeds Committee and elsewhere have disclosed a marked divergence of views between developed and developing countries, between coastal States which are maritime powers and those which are not, and between coastal and landlocked States. The divergence, which has seemed often to arise from imperfect understanding of the real interests at stake on each side, is rooted more in politics, economics, and history than in law; but it is a fact which cannot be ignored in seeking realistic legal accommodations.

This Report consequently addresses itself, with the forthcoming 1973 Conference in mind, to the general question of how to balance fairly the legitimate interests of a coastal State with those of other States and with the international community as a whole. Its viewpoint is evolutionary rather than revolutionary, for we believe that the existing law of the sea, as much as the sea itself, is part of the common heritage of mankind and is not lightly to be tampered with. Our mandate is confined to mineral resources; but in the present state of affairs we shall have to advert on occasion to other uses of the sea which may affect our subject.

## II. RECENT TRENDS IN STATE POLICIES

### *A. Limits of National Jurisdiction*

In recent years the tendency on the part of some coastal States to enlarge their claimed limits of national jurisdiction offshore has become more pronounced. With respect to the territorial sea, over 50 coastal States, the largest single group, now claim a 12-mile limit. Other States have sought to extend their exclusive fishery limits, or establish wide pollution control zones. Still others have endeavored to employ the rationale of the continental shelf doctrine, limited in its Geneva Convention form to seabed and subsoil resources, to justify claims to resources in the waters above. And ocean archipelago States, faced with special geographical problems, have asserted a right to measure their territorial sea from baselines around their outermost

islands, thereby making sea areas within the archipelago internal waters regardless of size.

Even the United States, since 1793 a staunch supporter of a three-mile limit, has indicated its readiness to accept 12 miles as part of a general agreement on that figure. But it attaches an important condition: that a right of free transit to be recognized through those international straits which would become entirely territorial sea of one or more States as a result of the increased limit. This right would be comparable to the freedom of navigation and overflight now recognized in the high seas generally, and hence would be more extensive than the right of mere innocent passage through the territorial sea. On the other hand, this right of transit would be considerably more limited than high seas rights.

A special aspect of this trend toward wider jurisdictional limits is to be found in the attitudes of those States, some ten in number, which have decreed in some form a 200-mile limit off their coasts. It should be noted, however, that the various claims so far enacted differ considerably among themselves, in the quality of asserted jurisdiction. Although usually couched in terms of "territorial sea," they often claim in fact rights less extensive than those normally associated with the territorial sea: for example, the international right to freedom of navigation and overflight in the area is frequently recognized.<sup>4</sup> At recent meetings of the United Nations Seabeds Committee wide support has developed for a 200-mile "economic zone" of some kind among States in all parts of the world.

Generally opposed to extremely wide territorial sea claims have been those States with extensive interests in shipping or distant-water fishing, or with a need for naval mobility. Opposition to a broad economic zone is centered in shelflocked and landlocked States, some 60 in number. Each of these groups sees in such broad claims some threat to its particular interests at sea, but they cannot be said to represent a united opposition.

#### *B. International Seabed Regime*

While States have largely acted unilaterally in their recent moves to fix their jurisdictional limits offshore, they have also engaged in extensive discussion at the United Nations and elsewhere about the structure and functions of an international regime to govern the development of mineral

<sup>4</sup> Dr. F. V. Garcia-Amador, Director, Department of Legal Affairs, General Secretariat of the Organization of American States, in a careful study for the Law of the Sea Institute at the University of Rhode Island, "Latin America and the Law of the Sea" (January 1972), has concluded that only three of the Latin-American claims appear to assert a full territorial sea jurisdiction in the 200-mile belt.

resources on and under the ocean floor beyond the limits of coastal State national jurisdiction. This discussion is still under way in Subcommittee I of the UN Seabeds Committee in preparation for the 1973 Conference.

Particularly stimulating to the debate was a working paper, presented by the United States in August 1970, in the form of a model multilateral convention.<sup>5</sup> Its elaborate—perhaps over-elaborate—arrangements cannot be fully described here, but mention should be made of its approach to two major problems: the limits of coastal State jurisdiction and the structure of the international regime. With respect to the former, it introduced the concept of a “trusteeship” or “intermediate” zone to lie immediately seaward of the coastal State’s limits of seabed jurisdiction over its continental shelf. As proposed by the United States, this intermediate zone would extend from the 200-meter depth line seaward to the outer edge of the continental margin. This zone would form part of the international seabed area, but within its limits the coastal State as “trustee” would hold delegated enumerated powers to control exploitation, subject to compliance with international operating standards and to payment of a substantial part of the revenues collected to the international authority.

With respect to the international regime, this draft proposed a licensing system to be administered by an international authority which would be essentially supervisory in nature. Its organs would include an Assembly of all member States; a Council of 24 States including the six most industrially advanced; a Tribunal with compulsory powers of adjudication; a Secretariat; and several technical commissions. Apart from its licensing and revenue collecting functions, the most important duty of the authority would be to prescribe and enforce international standards for the conduct of exploration and exploitation activities.

The reaction in the Seabeds Committee to the United States proposals on a trusteeship zone and on limits was mixed. While the trusteeship zone concept itself was not widely endorsed, it was doubtless taken into account in a later proposal by Venezuela. This advanced the concept of a “patrimonial sea” 200 miles in width, within which the coastal State would have full authority over both fish and mineral resources, but in which rights of free navigation and overflight would exist. This concept has since received a considerable measure of support.

On the question of the international regime, the attitude of the United States and a number of other States was in marked contrast to the proposal made by several developing States following a Latin-American initiative. In

<sup>5</sup> The text appears in UN Doc. A/AC. 138/25 (3 August 1970).

place of an authority with limited powers, this proposal would call for deep sea mineral development by an agency which would itself

"... have power to explore and exploit, control production and market resources, control research and pollution, distribute profits, preserve the marine environment and promote the development of the area by planning and ensuring the transfer of science and technology."<sup>6</sup>

On such a view, it was made clear, the role of private enterprise from the developed countries would be limited to participation in joint ventures with the international agency, but only until such time as the latter no longer required such cooperation.

The difference of view thus illustrated between those States which favor an international supervisory agency of limited powers, and those which favor what is in essence an operating monopoly, is obviously great. Up to the time of writing, the deliberations of the Seabeds Committee cannot be said to have illuminated the way to a mutually acceptable solution. In such circumstances, it may be helpful to lay aside the accumulate rhetoric and to recall the legitimate interests of both sides which need to be accommodated in any realistic answer. This we attempt to do, in summary fashion, in the next section.

### III. INTERESTS REQUIRING RECOGNITION

From the standpoint of the international community, there is first of all a major interest in freedom of navigation, communication, and transit at sea and in the airspace above. There is, on behalf of all mankind, a major interest in the promotion of scientific research and in necessary measures of environmental protection. There is a major interest in combining equitable access to the world's sea fisheries with appropriate steps to assure their conservation — the modern version, imposed by necessity, of the traditional freedom to fish. And lastly there is a general interest in equitable access to mineral resources of the seabed beyond national jurisdiction and in the receipt for international purposes of revenue from the development of those resources. Some States also demand a measure of participation in such development. While this list is not intended to be exhaustive, it is believed to cover the areas of principal concern today.

From the standpoint of the coastal State, there is a need at the outset for

<sup>6</sup> Statement of the delegate of Chile in Subcommittee I of the Seabeds Committee, 27 March 1972. UN Doc. A/AC. 138/SC.1/SR. 43, 7. The text of the proposal appears in UN Doc. A/AC. 138/49 (2 August 1971).

it to have substantially complete police powers in the waters immediately adjacent to its shores, together with powers of disposition and control over the corresponding seabed, subsoil, and airspace. It is a need essentially for a protective envelope around the State's land territory, to ensure that activities of any kind offshore do not adversely affect the security, policies, and public order of the State. For these purposes the exercise of extensive powers, but only in a fairly narrow zone, will normally be required. This need, long recognized in international law, has traditionally been filled by the concept of the territorial sea (supplemented by the concept of a narrow contiguous zone), which affirms the sovereignty of the coastal State over the territorial sea but which also provides for the international community a right of innocent passage.

Beyond this protective envelope a coastal State has other legitimate interests in the seas off its shores. These relate primarily, however, to natural resources and not to the public order of the land. While these interests may call for appropriate recognition, they do not require for their protection the extension to them of the full bundle of rights inherent in the legal concept of the territorial sea. Other concepts may well be better suited to accomplishing the desired goals.

Existing law already makes substantial provision for the protection of coastal State interests beyond the territorial sea. With regard to natural resources of the adjacent seabed and subsoil, the continental shelf doctrine in the 1958 Geneva Convention affirms the coastal State's sovereign rights out to 200 meters of water depth or beyond that depth to the limit of exploitability.<sup>7</sup> Within this area these rights are wholly adequate to safeguard the coastal State's exclusive interest in these resources; yet at the same time community interests in free navigation and other uses are protected by express recognition of the superjacent waters as high seas. The only serious question still open with respect to these resources is the precise location of the permanent seaward limit of coastal State seabed jurisdiction.

With regard to fisheries, no similar single concept defining the coastal State's rights has yet attained so wide an acceptance. The special interest of the coastal State in fisheries off its shores was recognized in the 1958 Geneva Convention on fishing, but this instrument has had little practical effect. More significant has been the trend discernible in recent bilateral or regional fishing agreements, which increasingly provide for preferences of various kinds to coastal States. While existing law in this field is still fragmented and inadequate, there appears to be wide agreement on the view that a coastal

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<sup>7</sup> See Footnote 3, re the judgment of the International Court of Justice in the North Sea Continental Shelf Cases.

State is entitled to some kind of special position with respect to fisheries off its shores. Differences relate almost entirely to the degree of special treatment to be accorded, to the methods of making it effective, and to the area in which it will operate.

In conclusion, we would note that in addition to the international community and the individual coastal State, there may be in some cases one other type of party with interests requiring recognition. This is the State which may have a special interest *vis-a-vis* a coastal State which is not strictly an interest of the international community as a whole. A right secured by a particular agreement, or an historic position in a particular fishery, might be examples. Where such an interest exists in substantial degree, it may be just and necessary to accord it recognition. The same is true of shelflocked and landlocked States, which because of their geographical position do not front on the deep oceans, but which should be equally entitled to share in the use and development of such ocean areas beyond the limits of national jurisdiction.

#### IV. STRIKING A BALANCE

In approaching the question of how to balance both fairly and realistically the interests just discussed, we are struck by the degree in which many of them are accommodated by existing law, particularly as codified in the 1958 Geneva Conventions on the Territorial Sea, the High Seas, and the Continental Shelf. Particular unsolved problems exist with respect to each of these, but we find the basic principles enunciated in each convention to be sound and reasonable. We believe it unnecessary and undesirable, if not positively harmful, to subject these conventions to extensive attempts at rewriting. Any conference charged with dealing with them should confine its work to resolving specific difficulties and to building where needed on the good work that has already been so laboriously accomplished.

This is not to say that we do not recognize that new problems as well as old now exist in the law of the sea, which the 1958 Conventions do not reach, or reach inadequately. The problem of fisheries is a leading example, environmental protection another. The precise limits of national jurisdiction for various purposes require definition in the light of the perceived interests of all parties. A balanced solution for the problem of archipelagos must be sought. A viable regime for deep sea mineral resources, based on pragmatic rather than doctrinaire considerations, must be designed. Even if some of these topics can be dealt with only in general terms, there is work enough here for any conference.

In the light of these considerations, and on the basis of our assessment of

the legitimate needs to be satisfied, we propose the following approaches to the problems which will doubtless be the principal subjects of controversy at the 1973 Conference.

In general, we urge consideration of the technique used successfully in the 1958 Conference: to frame separate instruments on separate topics rather than to attempt to cover all subjects in a single document. We believe experience with the four 1958 Conventions demonstrates that the chances of acceptance of the Conference's work will be much enhanced if this is presented in interrelated but individual packages.

#### *A. Limits of National Jurisdiction*

1. With respect to the *territorial sea*, we propose a uniform limit of 12 miles, subject to concurrent acceptance of our proposal 2 below. Within this belt, measured in accordance with the rules laid down in the Territorial Sea Convention, the rights and duties of the coastal State would be those established by the Convention and by customary law.

2. With respect to *straits*, we propose the affirmation of a universal right of free transit by sea and air through straits used for international navigation which are more than six miles wide.<sup>8</sup>

3. With respect to *ocean archipelago States*, we make no specific proposal, except to point out the obvious need of preserving rights of free passage along existing international air and sea routes. We note with interest, however, the concept recently suggested of "insular waters." Such waters would comprise those lying within an archipelago but beyond a 12-mile limit as normally constructed around each island. In these waters the archipelago State would have all the rights associated with the territorial sea except that a right of free transit by sea and air, rather than a mere right of innocent passage, would exist.<sup>9</sup> A possible variant would be to limit this right of free transit to air and

<sup>8</sup> We say "affirmation" rather than "establishment" because of our belief that such a right already exists. Thus, in straits that have long been subject to the exercise of high seas rights, an easement for the continued exercise of these rights by the international community would appear to exist, irrespective of the territorial sea claims of individual States. We also find support for our view by analogy in Article 5(2) of the Territorial Sea Convention, which provides that if adoption of a straight-baseline system of delimitation has the effect of creating new areas of internal waters, a right of innocent passage shall continue to exist in such waters.

<sup>9</sup> This concept is described in detail in Hodgson and Alexander, "Towards an Objective Analysis of Special Circumstances," *Law of the Sea Institute Occasional Paper No. 13*, pp. 45-52 (1972). Mr. Goldie believes that the "archipelago theory" is too serious an encroachment on the freedom of the seas to deserve more than limited recognition of competence for particular purposes by analogy to the contiguous zone concept. He also expresses reservations about our proposal with respect to the outer limits of national jurisdiction.

sea routes that have been customarily used for international navigation.

4. With respect to rights over the *continental shelf*, as those rights are defined in existing law, we propose that by an appropriate protocol to the Continental Shelf Convention or by some similar device the limits of such rights be defined as coinciding with the outer edge of the continental margin or with a line drawn 200 miles seaward of the baseline from which the width of the territorial sea is measured, whichever lies further offshore. Though perhaps the point is more political than legal, we also propose that by the same arrangement the coastal State be obligated to pay to the international seabed regime, or into a fund to be administered by the World Bank, for the benefit of less developed countries, a stated portion of the value of the minerals produced each year from the area lying between the 200-meter depth line (or the 12-mile limit, whichever is further seaward), and the limits proposed above. We would, of course, preserve the principle of Article 3 of the Convention on the Continental Shelf, that "The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas, or that of the airspace above these waters." In our opinion this twofold solution reconciles fairly, without violating rights acquired or acquirable under existing law, the legitimate interests of both the coastal State and the international community. It also satisfies, we think, the admirable objectives set forth in President Nixon's ocean policy statement of May 1970 (reprinted in our 1970 Report).

5. With respect to *pollution*, we propose that, by the arrangement mentioned above, the coastal State be obligated to enforce internationally agreed standards for the protection of the marine environment from pollution arising from operations within the limits suggested in proposal 4 above. We assume, in so proposing, that pollution originating from passing vessels will be dealt with in international arrangements now being framed by the Intergovernmental Maritime Consultative Organization. We would also note that much pollution in coastal waters arises from sources other than these, e.g., outflow from activities on land.

6. With respect to *scientific research*, not including penetration of the seabed, we propose the affirmation of a right for all States to conduct such research in the ocean beyond the 12-mile limit or in the seabed beyond the 200-meter line.<sup>10</sup> Within the further limit suggested in proposal 4 above, the

<sup>10</sup> Research involving penetration of the seabed poses a serious problem. Mr. Finlay points out that the "Glomar Challenger", for example, has a reentry capability that would permit it to reach oil bearing strata but as yet has no blow-out prevention capability. Several members make the point that it is inconceivable that the coastal State — the United States in the Santa Barbara Channel beyond the 3 mile line, for example — now lacks competence to prevent hazardous drilling, or should be denied recognition of such competence in any future convention.

coastal State should be informed of any research undertaken and supplied with the scientific data resulting therefrom, but its consent should not be prerequisite to such research.

7. With respect to *fisheries*, we make no specific proposal since the subject is not part of this Committee's assignment. We note, however, the proposal advanced by the United States delegation at the Seabeds Committee meeting in March 1972. This urged, in general, a species approach to fisheries management, rather than the establishment of geographical limits of national fisheries jurisdiction. Coastal and anadromous species would be subjected to appropriate coastal State controls as far offshore as the particular stock ranges. (Later developments, e.g., an agreement with Brazil, appear to indicate that shrimp are deemed to be in this category.) Tuna and other highly migratory species, however, would be managed under international arrangements in which all interested States could participate. We find this general approach not incompatible in principle with our approach to mineral resource problems.

#### *B. International Seabed Regime*

With respect to an *international regime* for the seabed and subsoil beyond the limits of national jurisdiction, we reaffirm the views in our 1970 Report<sup>11</sup> favoring a claims registration system, an international supervisory authority with adequate but clearly defined powers, and appropriate arrangements for the expeditious settlement of disputes. We also reaffirm our views on the need to assure security of investments, and on the many subsidiary problems considered in that report. We recognize, however, that on many aspects of the regime there is room for negotiation. For this reason we could support in general, for example, the pattern of regime for this area, beyond the limits of national jurisdiction, proposed in the United States working paper of 1970 or the United Kingdom proposals of the same year, even though in our view the organizational arrangements in the United States paper are unnecessarily complicated.<sup>12</sup>

On the other hand, we are strongly opposed to the creation of an international regime which would place in the hands of a single agency exclusive operating rights, control over production and distribution, allocation of profits, authority over scientific research, or any combination of these powers. Not only is such a monopoly unacceptable in principle, but it

<sup>11</sup>Proceedings and Committee Reports, *supra* note 2.

<sup>12</sup>This general comment is not an indorsement of a number of specific provisions in the United States working papers, e.g., those relating to relinquishments and payments by operators, which several members believe would place such excessive economic burdens upon operators as to deter development.

would be wholly unworkable in practice. Even if investment capital were available, the conditions for its employment would be such as to halt all progress for the foreseeable future in the development of the resources of the ocean floor. This would be particularly injurious, we would note, to the economic development plans of the developing States.

It may seem that a design so obviously counter-productive need not be a matter for alarm. We are concerned, however, lest it might come about as a consequence of negotiations to reach desired solutions on other issues in the law of the sea. We believe that a viable regime for deep sea resources must be founded on technological and economic realities, not on unrelated political bargains or abstract dogmas. Resources in the deep sea, like natural resources everywhere, are of no benefit to anyone until they are recovered for use by consumers. If the goal is to make such resources widely available for the common advantage, the applicable regime must encourage the necessary development. If the 1973 Conference is to have any success in this field, it must deal honestly and fairly with these realities.

#### V. INTERIM ARRANGEMENTS

Even if a Law of the Sea Conference is successful in 1973 or later in producing appropriate instruments on the subjects before it, it will be almost inevitably five to ten years before these can be brought into force. (The 1958 Conventions took from four to eight years to come into force, with an average of six years.) In relation to deep sea mineral resources in particular, this time-lag appears to be especially acute since technological progress is already at the point where it is possible to begin work on some such resources.

At the same time, the world's need to seek out these resources, in order to meet the demands of more and more peoples for better living standards, indicates the desirability of proceeding at a steady pace toward such development. "Crash" programs to meet shortages when they arise should be avoided: we should plan instead for orderly development with all deliberate speed. This view suggests to us a need for interim arrangements which will encourage development, prevent a lawless free-for-all at sea, and yet will merge without disruption into the permanent international regime when the latter becomes effective.

One approach to this question which we believe to have merit is embodied in the concept of reciprocal legislation. This would call for a municipal statute which would operate only upon persons subject to the jurisdiction of the enacting State, to whom the enacting State would issue licenses covering stated sections of the deep seabed.

The statute would not make any territorial or proprietary claims, but it would confer an exclusive right as against any other national of the enacting State. Nationals of other States would be free to mine in that same area (subject, of course, to the regulation of their own governments).

The proposed legislation, however, would contemplate reciprocity in the following sense. Nationals of the enacting States would be prohibited from mining in areas under licenses issued by other countries with comparable legislation which impose parallel restraints on their nationals. This type of legislation, it should be noted would be no less available to landlocked States than to coastal States, and would be equally available to the less developed nations and the industrialized nations. Suitable safeguards, of course, against the speculative licensing of excessively large areas by any one State, or to any one licensee, should be included. In recognition of the interest of all mankind, not only in the orderly development of the resources of the deep seabed but in sharing the benefits, the proposed legislation could provide for payment into a fund which would be available for lending or giving to less developed nations.

In our opinion, despite reservations on matters of detail, the proposed system would appear to have two advantages: it would provide for orderly development, and yet, because it founds jurisdiction on the principle of nationality, it would rest on a sound basis in existing law.

Respectfully submitted,

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 \*\*WILLIAM T. BURKE  
 WOODFIN L. BUTTE  
 THOMAS A. CLINGAN, JR.  
 THOMAS EHRLICH  
 LUKE W. FINLAY  
 ADRIAN S. FISHER  
 L.F.E. GOLDIE  
 STEPHEN GOROVE  
 \*\*WILLIAM L. GRIFFIN  
 G.W. HAIGHT  
 \*\*\*LOUIS HENKIN  
 \*\*JOHN G. LAYLIN  
 WILLIAM J. MARTIN  
 JOHN E. McCRACKEN  
 MYRES S. McDOUGAL  
 PATRICK J. MORGAN

JOSEPH W. MORRIS  
 \*\*JEROME C. MUYS  
 \*MYRON NORDQUIST  
 CECIL J. OLMSTEAD  
 \*OSCAR SCHACHTER  
 AARON L. SHALOWITZ  
 LOUIS B. SOHN  
 \*DAVID P. STANG  
 DANIEL WILKES  
 \*MALCOLM R. WILKEY  
 RICHARD YOUNG, *Rapporteur*  
 NORTHCUTT ELY, *Chairman*

Separate Statement of Mr. Laylin, in which Mr. Griffin joins:

While I am in general agreement with the report, I think too much emphasis has been put on the desirability of a broad continental shelf. Given a satisfactory international regime, I see advantages in narrow continental shelves.

I question the use of the language from the *North Sea Continental Shelf Cases* when applied to the outward limit of the Continental Shelf. The issue in those cases was not the seaward limit but the lateral boundaries between the countries facing the North Sea.

Separate Statement of Mr. Burke:

Mr. Burke disagrees with some recommendations of the Committee, has substantial reservations about others, and does not wish to be recorded as a sponsor of this report.

\*Members indicated by a single asterisk have asked that, because of their official positions, their names not be included as sponsors of this report.

\*\*Mr. Muys became a member of the Committee too late to participate in the consideration of this report. The separate statements of Messrs. Laylin, Griffin, and Burke are appended.

\*\*\*Mr. Henkin Dissents.

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